

CV 08 1322

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BIANCO, J.

TOMLINSON, M

PLAINTIFF WILLIAM NEARY

-V-

DEFENDANT NO. 1 JEFFREY GRODER

114 OLD COUNTRY ROAD

SUITE 345

MINNEAPOLIS, N.Y. 11501

DEFENDANT NO. 2 MICHAEL BERGER

LEGAL AID SOCIETY

1 MILLER KILLER WAY

HEMPSTEAD, N.Y. 11550

FILED

IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 28 2008 ★

LONG ISLAND OFFICE

COMPLAINT UNDER

THE CIVIL RIGHTS ACT

42 U.S.C. 1983

JURY TRIAL REQUESTED

1.) PREVIOUS COMPLAINT

I HAVE FILED A PREVIOUS

LAWSUIT DEALING WITH SOME OF

THE FACTS IN THIS ACTION

RELATING TO MY IMPRISONMENT

IN FEDERAL COURT

1.) THE PARTIES TO PREVIOUS LAWSUIT

PLAINTIFF WILLIAM NEARY

DEFENDANTS JEFFREY GRODER

DEVANE &amp; GRODER

2) FEDERAL COURT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

3) NO. 08 CV 2071

4) CHIEF JUDGE KENNETH M. WOOD

5) DISPOSITION: DISMISSED AND NOT  
APPEALED: DISMISSED FOR FAIL-  
URE TO STATE A CLAIM UPON  
WHICH RELIEF CAN BE GRAN-  
TED.

6) DATE LAWSUIT WAS FILED  
OCTOBER 17, 2007

7) DATE OF DISPOSITION MARCH 3, 2008

PLAINTIFF IN THIS COMPLAINT

PLAINTIFF WILLIAM NEARY

NO. 300772

SOUTHWEST C.F.

P.O. BOX 2008

RENECETH, NY 14874

DEFENDANT NO<sup>#</sup> 1      JEFFREY GRODER  
114 OLD COUNTRY RD  
SUITE 345  
MANHATTAN, NY 10501

DEFENDANT NO<sup>#</sup> 2      MICHAEL BERGER  
LEGAL AID SOCIETY  
1 HELEN KELLER WAY  
HEMPSTEAD, NY 11550

STATEMENT OF FACTS

FACTS

CLAIM NO<sup>#</sup> 1

ON APRIL 24, 2001 JEFFREY GRODER  
WHILE MASQUERADING AS MY ATTOR-  
NEY BEFORE THE HON. ADAM H.  
MOSER IN PART 9 DISTRICT COUR-  
T IN THE COUNTY OF NEW YORK  
- LOCATED AT 262 OLD COUNTRY  
RD - WAIVED MY RIGHT  
TO APPEAR IN COURT FOR MY  
FELONY EXAM

THEREBY DEPRIVING ME OF MY  
 CONSTITUTIONAL RIGHT TO BE PRE-  
 SENT IN COURT AT ALL CRITICAL  
 STAGES OF PROCEEDINGS CONDUCT-  
 ED AGAINST ME AND RIGHT  
 TO LIBERTY AND DUE PROC-  
 ESS OF LAW. (SEE EXHIBIT NO. 1  
 "COURT PROCEEDINGS FROM APRIL  
 24, 2001). I NEVER RETAINED J-  
 EFFREY CRODER AS MY ATTORN-  
 EY ON APRIL 24, 2001 NOR D-  
 ID THE COURT APPOINT HIM  
 MY CASE ON APRIL 24, 2001  
 (EMPHASIS ADDED). THE COURT  
 AND PROSECUTORS A.D.A KEM-  
 PERCY AND A.D.A WRIGHT UNK-  
 ER WAS FULLY AWARE OF THE  
 FACT THAT ON APRIL 24, 2001  
 THAT I WAS A CLIENT OF  
 THE LEGAL AID SOCIETY (SEE  
 EXHIBIT NO. 2 "COURT PR-  
 OCEEDINGS OF ARRAIGNMENT")  
 AND (SEE EXHIBIT NO. 3  
 WAIVER SIGNED BY LEGAL  
 AID ATTORNEY) YET AL-  
 LOWED JEFFREY CRODER  
 TO MASQUERADE AS MY  
 ATTORNEY AND WAIVE

MY STATUTORY, PROSECUTORIAL AND CONSTITUTIONAL RIGHTS. IT IS A STATE RESPONSIBILITY TO ENSURE AN INDICENT DEFENDANT RIGHTS TO COUNSEL. ON APRIL 15, 2001 THE LEGAL AID SOCIETY WAS APPOINTED IN MY CASE (SEE EXHIBIT NO. 2) ON APRIL 24, 2001 WHEN JEFFREY GROBER WAIVED MY RIGHT TO APPEAR IN COURT I WAS STILL A CLIENT OF THE LEGAL AID SOCIETY (SEE EXHIBIT NO. 3). THE REPRESENTATION OF JEFFREY GROBER WAS ILLEGAL BECAUSE JEFFREY GROBER WAS NOT RETAINED BY ME OR APPOINTED IN MY CASE BY THE COURT NOR IS HE A MEMBER OF THE LEGAL AID SOCIETY. THEREFORE; IT IS NOT POSSIBLE FOR HIM TO HAVE BEEN ACTING IN THE CAPACITY OF A "RETAINED ATTORNEY OR A PUBLIC DEFENDER" (EMPHASIS ADDED). FURTHERMORE; IT IS NO CONCURRENCE TH.

AT ON THE SAME DAY APRIL 24, 2001  
 WHILE JEFFREY GRODER WAS  
 VIOLATING MY RIGHTS BEFORE THE  
 HON. ADAM H. MOSER (SEE EXHIBIT  
 NO #1), THAT THE PROSECUTOR  
 A.D.A. WALT BUNKER WAS PRESE-  
 NTING THE CASE TO THE GRAND  
 JURY (SEE EXHIBIT NO #4) AND  
 THE LEGAL AID SOCIETY ATTOR-  
 NEY WAS SIGNING A WAIVER  
 WITHOUT MY KNOWLEDGE OR CO-  
 NSENT (SEE EXHIBIT NO #3). ON  
 APRIL 25, 2001 BEFORE THE HON.  
 JUDGE L. BORTAN THE LEGAL  
 AID SOCIETY WAS RECALLED  
 (SEE EXHIBIT NO #5 PAGE 2-5)  
 AND THEN JEFFREY GRODER  
 WAS ADJUDICATED AND AFTER  
 HIS ADJUDICAMENT I STATED  
 THAT I DEMANDED A PCIONY  
 EXAM AND THAT MY CONSTITU-  
 TIONAL RIGHTS WERE BEING  
 VIOLATED (SEE EXHIBIT NO #5  
 PAGE 7 LINE 18-25). AT NO  
 TIME DID JEFFREY GRO-  
 DER TELL ME OR THE  
 COURT THAT HE WAS  
 INVOLVED IN MY CASE

THE DAY BEFORE ON APRIL 24, 2001.  
 I PROCEEDED TO TRAIL WITH JEFF-  
 FREY GRODER AS MY ATTORNEY UNA-  
 WARE OF HER PRIOR INVOLVEMENT  
 IN MY CASE BEFORE HER APPOINT-  
 MENT. THE HON. JUDGE L. BOKIAN  
 WAS NOT SUPPOSE TO APPOINT  
 JEFFREY GRODER MY CASE BECAU-  
 SE SHE WAS NOT EVEN THE SU-  
 BJECT PERSONS OVER MY CASE  
 (SEE EXHIBIT NO. 5 PAGE 3 LI-  
 NE 6-7). A.D.A. WAIT FUNKER A-  
 RRANGED HER APPOINTME-  
 NT WHICH CONSTITUTED PROSEC-  
 UTORY MISCONDUCT INTERFER-  
 ING WITH COUNSEL'S REPRESENT-  
 ATION. I WAS HIGHLY PREJUD-  
 ICD BY THE APPOINTMENT OF  
 JEFFREY GRODER BY THE STATE  
 WHICH WAS DEMONSTRATED BY  
 WHAT OCCURRED AT MY TRAIL.  
 THE PEOPLE TURNED OVER TO  
 JEFFREY GRODER THE NAME  
 AND LOCATION OF A PERSON  
 ON WHO WAS IDENTIFIED  
 BY THE VICTIM AS PASSING  
 A KNIFE TO ASSAULT THEM  
 30 DAYS PRIOR TO TRAIL.

THESE INDIVIDUALS COULD HAVE EXONER-  
 ATED ME HAD HE BEEN CALLED AS  
 A WITNESS ON MY BEHALF, THE PEOP-  
 LE GAVE THE NAME AND LOCATION  
 OF THE RIPEE ACCOMPLICE ON JAN-  
 UARY 28, 2002 BEFORE THE HONORABLE  
 COURT OF (SEE EXHIBIT NO. 8 (A) P-  
 AGE 4 LINE 16-25, PAGE 5 LINE 1-6)  
 "IT SHOULD BE NOTED THAT THE RI-  
 PEE ACCOMPLICE WAS IN THE CU-  
 STODY OF THE NASSAU COUNTY CORR-  
 ECTIONAL CENTER" AND COULD HAVE  
 EASILY BEEN SUBPEONED TO TESTI-  
 FY AT TRIAL. COUNSEL NOT ONLY  
 FAILED TO INVESTIGATE BY NOT  
 INTERVIEWING ANTOINE BIRRE  
 BUT HE FAILED TO CONFER  
 WITH ME ABOUT THE WITNESS  
 AND DURING TRIAL IED  
 TO ME STATING THAT HE D-  
 ID NOT KNOW THE WITNESS  
 LOCATION. COUNSEL ALSO FAILED  
 CROSS EXAMINE THE VICTIM DO-  
 NAID LAMER ABOUT THE STAT-  
 EMENT HE GAVE DETECTIVE FEE-  
 RO STATING THAT ANTOINE  
 BIRRE PASSED A KNIFE  
 TO ASSAULT HIM AND THAT



STATEMENT WAS TURNED OVER TO COUNSEL  
 PRIOR TO TRIAL (SEE EXHIBIT NO. 8(9))  
 "A NOTE OF DETECTIVE FLEPP OF AN  
 INTERVIEW WITH THE VICTIM". COUNSEL  
 ALSO PLACED AN ALIBI WITNESS ON  
 THE STAND AT TRIAL VERNE JONES  
 WHO KNEW WOULD TESTIFY FAISLY  
 ABOUT A PHONE CALL SHE RECEIVED  
 FROM ME ON HER CELL PHONE ON  
 THE NIGHT OF THE RIVER CRIME  
 WHEN HER CELL PHONE RECORDS SH-  
 OWED THAT SHE RECEIVED NO SUCH  
 CALL AND COUNSEL WAS IN POSSESSION  
 OF HER CELL PHONE RECORDS PRI-  
 OR TO PLACING HER ON THE ST-  
 AND. JEFFREY GORDON SHOULD  
 HAVE NEVER BEEN APPOINTED MY  
 CASE AND HIS APPOINTMENT  
 AFTER APRIL 24, 2001 LEAD  
 TO ME BEING CONVICTED. JEFF-  
 REY GORDON VIOLATED MY CON-  
 STITUTIONAL RIGHTS UNDER THE  
 THE UNITED STATES CONSTITUTION  
 FIFTH, SIXTH, AND FOURTEENTH  
 AMENDMENT AND HE WAS AWA-  
 RE THAT HE VIOLATED MY  
 RIGHTS (SEE EXHIBIT NO. 8  
 PAGE 4 LINE 14-19). ALL

ATTACHED EXHIBITS SUPPORT THIS ACTION AGAINST JEFFREY GRODER FROM EXHIBIT NO#1 TO NO#11)

CLAIM NO# 3

ON APRIL 24, 2001 A MEMBER OF THE LEGAL AID SOCIETY MICHAEL BERGER WHILE ACTING IN CONCERT WITH P.D.A. WAIT TURNER SIGNED A WAIVER OF MY CONSTITUTIONAL RIGHTS, "WITHOUT MY KNOWLEDGE OR CONSENT" (SEE EXHIBIT NO# 3). THE WAIVER WAS FILLED OUT BY P.D.A. WAIT TURNER THEN SIGNED BY THE LEGAL AID ATTORNEY MICHAEL BERGER WHO WAS FILING IN FOR KENNETH ROSS, "COMPARE THE HANDWRITING" ON (EXHIBIT NO# 3 AND EXHIBIT NO# 7). ITS OBVIOUS THAT BOTH DOCUMENTS WAS FILLED OUT BY THE SAME INDIVIDUAL P.D.A. WAIT TURNER. MICHAEL BERGER FAILED TO PROVIDE ME WITH EQUAL PROTECTION BY 1.) ALLOWING JEFFREY GRODER TO VIOLATE MY RIGHTS ON APRIL 24, 2001 BEFORE THE HON. ADAM H. MOSER WHILE I WAS A CLIENT OF THE LEGAL AID SOCIETY AND

2) BY NOT HAVING ME PRODUCE FOR MY FELONY EXAM THAT I DEMANDED AND BY 3) MICHAEL BERGER SEEKING A HEARING WITHOUT MY KNOWLEDGE OR CONSENT," HAVING MY RIGHT TO A SPEEDY PRELIMINARY HEARING, GRAND JURY PRESENTATION, AND SPEEDY TRIAL WHEN I EXPRESS-  
 TLY EXPRESSED TO OTHER MEMBERS OF THE LEGAL AID SOCIETY THAT I DEMANDED A FELONY EXAM. MICHAEL BERGER WAS SUPPOSE TO PRO-  
 TECT MY RIGHTS BEFORE THE HON. ADAM H. MOSER (SEE EXHIBIT NO. 1) ON APRIL 24, 2001 BUT INSTEAD OF REPRESENTING ME BEFORE THE HON. ADAM H. MOSER ON APRIL 24, 2001 HE WAS CONDU-  
 CTING A CONFERENCE OFF THE RECORD BEFORE THE HON. AB-  
 BEY L. BOKIAN (SEE EXHIBIT NO. 5 PAGE 2 LINE 6-10) WHEN THERE WAS NO COURT PROCE-  
 EDING CONDUCTED BEFORE THE HON. ABBEY L. BOKIAN ON APRIL 24, 2001 CONCER-  
 NING MY CASE. MICHAEL BERGER ACTIONS VIOLATED

MY CONSTITUTIONAL RIGHTS UNDER THE  
UNITED STATES CONSTITUTION FIFTH, SIX-  
TH, FOURTEENTH AMENDMENT.

RELIEF SOUGHT: I ASK THIS COURT  
TO HAVE EACH  
DEFENDANT PAY  
A TOTAL AMOUNT  
OF \$2,000,000 PER  
DEFENDANT.

WILLIAM NEALY UNDER THE PEN-  
ALTY OF PERJURY DEPOSES AND  
SAYS: THAT THE FOREGOING IS TR-  
UE AND CORRECT.

William Nealy

PLAINTIFF

DATED 3/19/08

I DECLARE UNDER THE PENALTY  
OF PERJURY THAT ON THIS  
19TH DAY OF MARCH 2008, I WILL  
DELIVER THIS COMPLAINT TO  
A CORRECTIONAL OFFICER TO  
MAIL TO THE UNITED STATES  
DISTRICT COURT FOR THE EAS-  
TERN DISTRICT OF NEW YORK

William Nealy

PLAINTIFF

# EXHIBIT 1

1  
2 NASSAU COUNTY FIRST DISTRICT COURT  
3 FELONY PART 9

4 THE PEOPLE OF THE STATE OF NEW YORK

Ind. No.  
8309/01

5 -against-

Proceedings

6  
7 WILLIAM NEALY,

Defendant.

8  
9 April 24, 2001

10 262 Old Country Road  
11 Mineola, NY

12 B E F O R E:

13 HON. ADAM H. MOSER,  
14 District Court Judge

15 A P P E A R A N C E S :

16  
17 For the People:

DENIS DILLON, ESQ.  
District Attorney, Nassau County  
18 BY: KIM PERCYZ, ESQ.,  
19 Assistant District Attorney

20 For the Defendant:

DEVANE & GRODER, ESQS.  
Attorneys for Defendant  
21 114 Old Country Road, Suite 345  
22 Mineola, NY 11501  
BY: JEFFREY GRODER, ESQ.

23 \* \* \*

24 JANICE M. CLARKE  
25 Official Court Reporter

Proceedings

(In open court:)

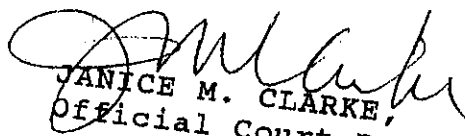
(Defendant not present.)

THE CLERK: Number 68, William Nealy.

MR. GRODER: Requesting felony exam for tomorrow. Waive my client's appearance. Continue felony exam demand for tomorrow.

THE CLERK: Part nine, 4/25, felony exam.

\*  
Certified that the foregoing is a true and  
accurate transcript of the original  
stenographic minutes in this case.

  
JANICE M. CLARKE,  
Official Court Reporter



DISTRICT COURT : NASSAU COUNTY

FIRST DISTRICT : ARRAIGNMENT A

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Index No. 008309/01  
008310/01

WILLIAM NEALY,

Defendant.

- - - - -X

April 15, 2001  
Hempstead, New York

B E F O R E : HON. DAVID A GROSS  
DISTRICT COURT JUDGE

A P P E A R A N C E S :

HON. DENIS DILLON  
NASSAU DISTRICT ATTORNEY  
99 Main Street  
Hempstead, New York  
BY: MATTHEW STRAUS, ESQ.

MATTHEW MURASKIN, ESQ.  
ATTORNEY FOR THE DEFENDANT  
1 Helen Keller Way  
Hempstead, New York  
BY: BARBARA RANEY, ESQ.

MINUTES OF ARRAIGNMENT

REPORTED BY:  
CYNTHIA FAVATA  
Official Court Reporter

# EXHIBIT 2

DISTRICT COURT : NASSAU COUNTY

FIRST DISTRICT : ARRAIGNMENT A

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Index No. 008309/01  
008310/01

WILLIAM NEALY,

Defendant.

- - - - -X

April 15, 2001  
Hempstead, New York

B E F O R E : HON. DAVID A GROSS  
DISTRICT COURT JUDGE

A P P E A R A N C E S :

HON. DENIS DILLON  
NASSAU DISTRICT ATTORNEY  
99 Main Street  
Hempstead, New York  
BY: MATTHEW STRAUS, ESQ.

MATTHEW MURASKIN, ESQ.  
ATTORNEY FOR THE DEFENDANT  
1 Helen Keller Way  
Hempstead, New York  
BY: BARBARA RANEY, ESQ.

MINUTES OF ARRAIGNMENT

REPORTED BY:  
CYNTHIA FAVATA  
Official Court Reporter

1 (The rights were read in the courtroom  
2 preceding this arraignment.)

3 THE CLERK: William Nealy.

4 THE POLICE OFFICER: Two files, one  
5 felony file.

6 MS. RANEY: Screening.

7 I waive a public reading, but not the  
8 rights with respect to the jurisdictional  
9 sufficiency of the Information and demand a  
10 conference in Part 9.

11 At this time I am notifying the District  
12 Attorney pursuant to CPL Section 190.50, of  
13 my client's intention to testify before the  
14 Grand Jury. Please acknowledge receipt.

15 MR. STRAUS: People acknowledge receipt.

16 THE CLERK: No NYSIS available.

17 MS. RANEY: With respect to the custody,  
18 your Honor, my client is thirty years old,  
19 lifetime resident of West Hempstead where he  
20 lives with his father. He is currently in a  
21 drug program at family services. It is a drug  
22 and alcohol program. He goes there from 9:00  
23 a.m. to four o'clock every day, five days a  
24 week. He is also scheduled to begin at Home  
25 Depot in Hempstead.

1           He does have contact with the criminal  
2           justice system. He has indicated to me that  
3           he is currently reporting to his parole officer  
4           without any incident. If your Honor is inclined  
5           to set some bail in this case, I ask it be done  
6           reasonable. No more than \$4,000.

7           THE COURT: People?

8           MR. STRAUS: Yes, your Honor. First of  
9           all, we are requesting a full stay-away Order  
10          of Protection to be issued on behalf of the  
11          complainant. Complainant is here in the  
12          courtroom. He stands at the rail with his mother.  
13          I have spoken with each one of them about this  
14          incident. They are requesting a stay-away Order  
15          of Protection to be issued. The complainant  
16          received a number of stitches from a long  
17          laceration that goes from his ear down below his  
18          ear along his face. The defendant is charge with  
19          a D felony assault. He does have prior assault  
20          in his history, in his criminal history. He also  
21          has numerous warrants. He has an escape charge  
22          and bail jumping charge.

23          THE DEFENDANT: Excuse me - -

24          MR. STRAUS: Also attempted murder charge  
25          there as well. We are going to ask for \$150,000

4  
1 bail be posted. We are also asking, based on the  
2 fact that the complainant's brother is a Nassau  
3 County Sheriff and works in the jail, that the  
4 defendant be housed in the main area of the jail so  
5 that they not meet, not have any contact.

6 THE COURT: Sounds reasonable to me. I will  
7 set bail at \$150,000.

8 THE POLICE OFFICER: Two bails.

9 THE COURT: On each, we are going to - -  
10 \$150,000 cash on each. Do you want a bail  
11 alternative?

12 MS. RANEY: Yes.

13 THE COURT: \$300,000 bail on each. In  
14 addition to that, I am signing this Order of full  
15 Order of Protection. Please understand, an Order  
16 of Protection is an Order of this Court, sir. For  
17 violation of this Order is a violation of an Order  
18 of this Court, carries with it the potential that  
19 you could be charged with an additional crime in  
20 addition to whatever you have done to get yourself  
21 arrested on the Order of Protection.

22 As far as do you need an Order to me  
23 relating to the circumstances of the prison? Is  
24 that something that I would do?

25 MR. STRAUS: I am not sure, Judge.

1 THE COURT: Mr. Nealy, listen up. Stay away  
2 from Donald Lanier, from his home, school, business  
3 and place of employment. Stay away from him  
4 wherever he may be.

5 Refrain from communication, by mail or by  
6 telephone, e-mail, voice mail or other  
7 electronic means with Donald Lanier.

8 Refrain from assault, stalking, harassment,  
9 menacing, reckless endangerment, disorderly  
10 conduct, intimidation, threats or otherwise  
11 interfering with the victim.

12 Surrender all firearms owned and possessed  
13 and do not contact him wherever he may be, directly  
14 or indirectly.

15 Do you understand?

16 THE CLERK: You can delete the firearms  
17 portion of the terms of the temporary Order of  
18 Protection.

19 Do you acknowledge receipt of the temporary  
20 Order of Protection, Mr. Nealy?

21 THE DEFENDANT: Yes.

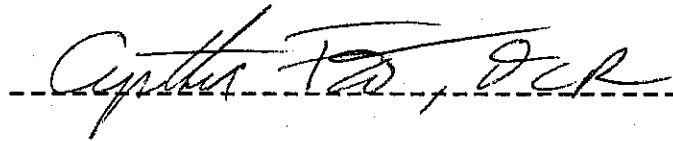
22 THE CLERK: Defendant is being served with a  
23 copy of the temporary Order of Protection, police  
24 department is being served with a copy and  
25 District Attorney's office has been served with a

6  
1 copy. The complaining witnesses is present in the  
2 Court. He is also being served with a copy of the  
3 temporary Order of protection.

4 Both cases are on in Part 9 on April 18.

5 \* \* \*

6 I hereby certify that the above and  
7 foregoing is a true and accurate transcript  
8 of my stenographic notes.

9  
10 -----

11 CYNTHIA FAVATA, OCR  
12  
13  
14  
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21  
22  
23  
24  
25



# EXHIBIT 3

People vs. William Nealy

Felony No.(s). 8309/01 and 8310/01

Date April 24, 2001

I, Michael Berger, on behalf of  
my client, William Nealy, hereby  
waive all my client's speedy trial rights, speedy preliminary  
hearing rights and speedy grand jury presentment rights, with  
regard to the above case and all joinable offenses from  
April 24, 2001 until withdrawn in writing.

I also consent to and request this adjournment.

Allen P. Plozyn  
Attorney for Defendant

# EXHIBIT 4

1 4-24-01

P.O. J. Gross

2 (The witness entered the grand jury  
3 room.)

4 MR. JUNKER: Please take the stand,  
5 remain standing. We have every grand juror present  
6 who was present for the previous testimony,  
7 correct?

8 A JUROR: Yes.

9 MR. JUNKER: Please raise your right  
10 hand to be sworn and face the grand jury foreperson.

11 (The witness complied.)

12 THE FOREPERSON: You do swear that the  
13 evidence you shall give to the grand inquest upon  
14 this complaint against William A. Nealy shall be the  
15 truth, the whole truth and nothing but the truth, so  
16 help you God?

17 THE WITNESS: Yes

18 EXAMINATION BY

19 MR. JUNKER:

20 Q. Please be seated. Pull yourself up to  
21 the mic if you need to. In a loud, clear voice,  
22 please state your name, spelling the last, and give  
23 your badge number and command assignment.

24 A. Police Officer Harold Gross, G-R-O-S-S,  
25 shield number 118 with the Village of Hempstead

1 4-24-01 P.O. J. Gross

2 Street and Jackson Street, actually to an area near  
3 Hempstead District Court in Hempstead, that area.

4 Were you present in your vehicle on that date?

5 A. Yes.

6 Q. Were you partnered up that date?

7 A. Yes.

8 Q. Who was your partner?

9 A. Officer Troy Wright.

10 Q. The vehicle that you were in, was that a  
11 fully marked police car?

12 A. Yes.

13 Q. The lights, markings, everything?

14 A. Yes.

15 Q. At any point around 4:21 a.m., were you  
16 approached by an individual or individuals regarding  
17 a crime that had taken place on April the 10th?

18 A. Yes.

19 Q. What were you told at that time?

20 A. I was approached by two male blacks who I  
21 know as Patrick Lanier and Donald Lanier that his  
22 brother was just slashed in the face earlier during  
23 the week by a male black subject which they had  
24 pointed out to us which started walking away from us  
25 when he was in the parking lot by Whistler's.

1 4-24-01 P.O. J. Gross

2 Q. Had he pointed to a male black that was  
3 nearby?

4 A. Yes.

5 Q. What did you and your partner do when you  
6 were informed of that?

7 A. Once we were informed of that, we then  
8 approached the male black just about on Center  
9 Street and Main Street.

10 Q. Will you please describe to the grand  
11 jury how this approach took place, what happened  
12 during this?

13 A. When the complainants told us that the  
14 male black had slashed his brother earlier during  
15 the week was pointed out, we had then wanted to know  
16 which one he was. And they pointed him out. And he  
17 started walking away from us real fast. Then we  
18 drove our RMP to stop him to investigate the  
19 incident that happened earlier during the week at  
20 which time then my partner, which was Officer  
21 Wright, was driving the car, gets out of the car,  
22 and he starts speaking to the defendant.

23 And the defendant stated to him that he  
24 didn't do anything and started walking backwards  
25 from us. And as our partner tried to interview him

1 4-24-01 P.O. J. Gross

2 more, he says, "Get your fucking hand off of me.

3 Don't touch me." At that time I get out of the car,

4 and the defendant then replied again, "Don't fucking

5 touch me," and turned around, and there was a foot

6 pursuit.

7 Q. He so ran?

8 A. Yes.

9 Q. During that foot pursuit, did you pursue  
10 on foot, or did you remain in the vehicle?

11 A. I remained with the vehicle and got in  
12 the car.

13 Q. What did you do when you got in the  
14 vehicle?

15 A. When I seen the subject run across the  
16 parking field in the rear of 99 Main Street, which  
17 is District Court, I then drove down Center Street  
18 to North Franklin to put him off at the pass.

19 Q. When you got to that location, did you  
20 see the defendant and your partner in pursuit?

21 A. Yes.

22 Q. What did you do at that point?

23 A. At that time then I pulled over to the  
24 curb and got out and gave foot pursuit and tackled  
25 him to the ground.

1 4-24-01 P.O. J. Gross

2 Q. And your partner, was he also in full  
3 uniform as you are today?

4 A. Yes.

5 Q. When you took defendant to the ground,  
6 was the defendant told he was under arrest?

7 A. Yes.

8 Q. What did the defendant do? Did he comply  
9 with your orders?

10 A. No. He then pushed me off of him, and we  
11 started wrestling on the ground.

12 Q. At this point were you attempting to  
13 handcuff him?

14 A. Yes.

15 Q. Did he comply with being handcuffed?

16 A. No.

17 Q. Please describe to the grand jurors what  
18 happened next.

19 A. At that time while I was still wrestling  
20 with him on the ground, my partner assisted me  
21 trying to get him handcuffed at which time we had to  
22 call for further assistance which about six or seven  
23 other officers came to the scene.

24 And we still had a hard time trying to  
25 get him handcuffed. He was blurting out saying he



1 4-24-01 P.O. J. Gross

2 was not going any fucking way.

3 Q. At some point were you able to handcuff  
4 him?

5 A. Yes.

6 Q. And he was subsequently identified as  
7 William Nealy?

8 A. Yes.

9 Q. He was taken to police headquarters and  
10 processed?

11 A. Yes.

12 Q. Prior to taking him to be processed, did  
13 someone retrieve the victim and bring him to the  
14 arrest scene?

15 A. Yes.

16 Q. Without telling us anything that was said  
17 at that point, was the victim placed in a position  
18 where he would have an opportunity to view the  
19 defendant?

20 A. Yes.

21 Q. Subsequent to that, he was transported to  
22 headquarters for processing?

23 A. Yes, he was.

24 MR. JUNKER: I have no further  
25 questions for this witness at this time.

## EXHIBIT 5

STATE OF NEW YORK . . . NASSAU COUNTY

COUNTY COURT PART I

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

WILLIAM NEALY, :

Defendant. :

-----X

262 Old Country Road  
Mineola, New York  
APRIL 25, 2001

B E F O R E:

HON. ABBEY L. BOKLAN,  
County Court Judge.

APPEARANCES:

HON. DENIS DILLON,  
Nassau County District Attorney  
By: WALT JUNKER, ESQ.,  
Assistant District Attorney  
For the People

RONALD BEKOFF, ESQ. and  
KENNETH ROSS, ESQ. - a.m. Session  
JEFF GRODER, ESQ. - p.m. Session  
For the Defendant

Minutes of Proceedings

Hanni J. Planos, CSR  
Official Court Reporter

ACE-10

People v. Nealy

2

1 THE CLERK: Grand Jury matter.

2 Appearances, please.

3 MR. ROSS: Kenneth Ross, Legal Aid.

4 MR. JUNKER: Walt Junker for the People.

5 MR. BEKOFF: Ronald J. Bekoff.

6 THE COURT: I am not the Judge for your  
7 case; I'm the Grand Jury Judge. I had adjourned this  
8 case at the request of Mr. Mike Berger of the Legal  
9 Aid Society who was representing you yesterday  
10 because of a witness.

11 Today Mr. Ross came in with an application.

12 Mr. Ross, you can make the application.

13 MR. ROSS: Yes, Judge.

14 After speaking with Mr. Berger and my  
15 supervisor this morning it was determined that there  
16 was an ethical conflict that would prevent us from  
17 continuing on this case. For that reason we would  
18 ask counsel outside of my office to represent  
19 Mr. Nealy.

20 THE COURT: Mr. Nealy, do you understand  
21 what your attorney, Mr. Ross, just said?

22 THE DEFENDANT: Well, I don't know what  
23 conflict they had.

24 THE COURT: I'm going to give you a moment,  
25 Mr. Ross, to speak to your client.

People v. Nealy

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1 MR. BEKOFF: Judge, could my appearance be  
2 waived? Can I take off?

3 THE COURT: It's Mr. Petrillo who will be  
4 handling this.

5 MR. BEKOFF: I will be picked up in six  
6 minutes.

7 THE COURT: You were accepting the case on  
8 behalf of Mr. Petrillo.

9 You're excused. Thank you very much.

10 MR. BEKOFF: Yes.

11 MR. JUNKER: I have assured Mr. Bekoff that  
12 I will call Mr. Petrillo and update him on the status  
13 of my case.

14 THE COURT: Mr. Nealy, do you understand  
15 now, has Mr. Ross explained to you the problem?

16 THE DEFENDANT: I understand what he's  
17 saying, but again, I mean, what he's telling me, I  
18 have no knowledge of that. I understand what he's  
19 saying.

20 THE COURT: All right. When an attorney of  
21 the high repute as Mr. Ross tells me they have an  
22 ethical problem with a client, I will relieve them.

23 THE DEFENDANT: Can we address the issue?

24 MR. ROSS: It's not something that can be  
25 addressed.

People v. Nealy

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1 I told him what transpired and why we can't  
2 represent him. I explained to him that the  
3 information we have will not be communicated to the  
4 Judge or the new attorney, so the new attorney will  
5 come in fresh without this dilemma.

6 I know what he has to say, that he's  
7 innocent of the crime. That's not the issue before  
8 us today.

9 THE DEFENDANT: I know what the issue is.  
10 I know. She told me what the issue was. The problem  
11 is I want to go to the Grand Jury today.

12 THE COURT: You are going to the Grand Jury  
13 today. But I just wanted you to know why you  
14 suddenly will have a different attorney.

15 I asked Mr. Bill Petrillo, who Mr. Ross  
16 will tell you is a very fine attorney, who  
17 unfortunately is someplace else right now, if he will  
18 accept the assignment; he said he will. And he will  
19 be back this afternoon and will be talking to you and  
20 will represent you this afternoon.

21 THE DEFENDANT: What about my witness? Has  
22 she testified already?

23 THE COURT: I don't think so. I'm not up  
24 there in the Grand Jury. Mr. Junker is the assistant  
25 district attorney who is putting the case in the

1 Grand Jury. I will ask Mr. Junker on or attorney.

2 THE DEFENDANT: She can't keep taking off  
3 from work and testify.

4 THE COURT: Mr. Junker?

5 MR. JUNKER: I will be updating the new  
6 attorney on the status of the case. And what you  
7 asked me, whether someone has or has not testified --

8 THE COURT: Yes, I'm asking whether he had  
9 a witness testify in the Grand Jury yet.

10 MR. JUNKER: No, Judge. The answer is no,  
11 she hasn't testified yet.

12 THE DEFENDANT: All right.

13 THE COURT: Your attorney will be here this  
14 afternoon, and he will be representing you.

15 Thank you very much.

16 We'll relieve you, Mr. Ross.

17 (Recess.)

18 \* \* \*

19 AFTERNOON SESSION

20 \* \* \*

21 MR. GRODER: For the defendant, Jeff  
22 Groder.

23 THE DEFENDANT: Grand Jury matter of  
24 William Nealy.

25 Appearances for the record, please.

People v. Nealy

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1 MR. JUNKER: Walt Junker, for the People.

2 THE CLERK: Are you William Nealy?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Nealy, we got a call from  
5 Mr. Junker about 3 o'clock.

6 MR. JUNKER: 2:30, Judge.

7 THE COURT: -- 2:30, that he received a  
8 call from Mr. Petrillo that he couldn't come today or  
9 tomorrow. We then immediately started to find you  
10 another attorney.

11 Happily -- and I thank you, Mr. Groder --  
12 he agreed to come back to the courthouse, and he has  
13 now arrived.

14 Mr. Groder, you'll accept the assignment of  
15 this case?

16 MR. GRODER: Of course, Judge.

17 THE COURT: I appreciate it. You are  
18 hereby assigned.

19 Mr. Junker, what's happening?

20 MR. JUNKER: Judge, given the fact that we  
21 had to get a new attorney and this is the last case  
22 for the Grand Jury, I'm going to have to put it in  
23 tomorrow because we couldn't wait for the Grand Jury  
24 anymore.

25 THE COURT: They're gone?



1 MR. JUNKER: Yes, they were done 11 o'clock  
2 waiting for this case.

3 And when I found out that the Court would  
4 not be available until about 2 or 2:30 to discuss the  
5 problems I was having with Mr. Petrillo, I knew this  
6 would not be resolved until very late. I can't have  
7 the Grand Jurors waiting.

8 I got a speedy trial still from the prior  
9 attorney.

10 I informed the Court as soon as I could.

11 THE COURT: They are coming back tomorrow?

12 MR. JUNKER: Yes.

13 My case is in. We are just waiting to see  
14 whether or not the defendant will be testifying.

15 THE DEFENDANT: I don't know how they could  
16 wait to decide that when I've told him I want to  
17 request --

18 First of all, I request a felony exam.  
19 They went over that. I don't know. They violated my  
20 due process, put me in for the Grand Jury. I told  
21 them I would be willing to testify before the Grand  
22 Jury.

23 I don't know what's the problem. And they  
24 didn't tell me the ethical problem.

25 THE COURT: The ethical problem was for

1 your other attorney.

2 THE DEFENDANT: I feel this is some type of  
3 game being played with him. Some lawyer told me cop  
4 out two to four, told me don't testify, alibi witness  
5 shouldn't be testifying.

6 Someone called my alibi witness, told her  
7 to lie.

8 THE COURT: I can't answer you for what I  
9 don't know.

10 What I know is basically at this point it  
11 must be Mr. Berger who talked to you yesterday  
12 because he came in yesterday and requested of the  
13 Court to adjourn it to today for your alibi witness  
14 to come in. He wanted to talk to your alibi witness  
15 and you before either of you testified before the  
16 Grand Jury. The assistant district attorney opposed  
17 it; they wanted you to testify yesterday.

18 THE DEFENDANT: And I was ready. They  
19 brought me up to the court.

20 This guy was sitting in the courtroom with  
21 an officer, uniformed officer.

22 I don't know who this guy is. They had me  
23 sitting up in there. Some identification thing is  
24 going on without me. I don't know what's going on.

25 MR. JUNKER: I should inform the Court,

1 Judge --

2 THE COURT: Can I finish?

3 Mr. Berger is a member of the Legal Aid  
4 Society, Major Offense Bureau, as is Mr. Ross.  
5 Mr. Ross was on jury duty and Mr. Berger was  
6 substituted.

7 Mr. Berger fought adamantly for an extra  
8 day to put this case in, over the opposition of the  
9 district attorney, and I granted that. Beyond that I  
10 don't know anything.

11 Mr. Junker?

12 MR. JUNKER: I should inform the Court that  
13 I did offer Mr. Berger the option of having the DA's  
14 office issue a Grand Jury subpoena for the alibi  
15 witness that has been referred to. He declined that  
16 offer.

17 She did, however, come in today and did not  
18 stay once things got delayed.

19 I extended a similar offer to defendant's  
20 new counsel, Mr. Groder.

21 I just wanted to put that on the record.

22 THE COURT: Thank you, Mr. Junker.

23 Mr. Groder, I can't bring back a Grand Jury  
24 that I didn't know was gone. They'll be here  
25 tomorrow and we'll produce your client.

1 Do you want a Grand Jury subpoena for the  
2 witness?

3 MR. GRODER: Judge, since I'm obviously  
4 coming in a little late in the game, from what my  
5 client has been saying to me, both in conference and  
6 on the record, I would take the district attorney up  
7 on that offer.

8 THE COURT: We'll see you tomorrow.

9 You may not see me. If there is no problem  
10 you'll be going directly into the Grand Jury.

11 THE DEFENDANT: So tomorrow everyone has  
12 testified at the Grand Jury, me and my alibi witness?

13 THE COURT: And any rebuttal witness the  
14 People would call after that, because the complaining  
15 witness --

16 The People's direct case is already in?

17 MR. JUNKER: Correct, Judge.

18 THE COURT: They have already testified.

19 MR. JUNKER: And I'll be happy to subpoena  
20 the alibi witness.

21 THE DEFENDANT: She don't need to be  
22 subpoenaed.

23 THE COURT: If you don't subpoena her and  
24 she doesn't show up I'm not going to adjourn it  
25 again. If she's subpoenaed --

People v. Nealy

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1 THE DEFENDANT: She was here. They keep  
2 putting her off.

3 THE COURT: Listen, if you don't issue a  
4 subpoena on her there is no control. She can come in  
5 voluntarily if she wants to. If I issue a subpoena  
6 she'll be forced to come in.

7 You don't want her to come by subpoena? Do  
8 you --

9 Let me finish.

10 You want her to come in voluntarily, and if  
11 she doesn't show up, that will be it.

12 THE DEFENDANT: I'm saying, how the case  
13 is, she's been coming since Monday, willing to  
14 testify, ready to testify. How can you tell me now  
15 she don't come, it's on me? How is that?

16 THE COURT: Mr. Groder, I leave it to you  
17 and your client to make the determination with  
18 Mr. Junker, whether you want her subpoenaed or not.  
19 I will not adjourn it for the alibi witness if he  
20 doesn't subpoena her.

21 MR. GRODER: I understand. And I would ask  
22 the district attorney to subpoena her.

23 I also advise my client that even though it  
24 is a late hour, I understand that he'll be back here  
25 tomorrow to testify, I'll go see him tonight at the

People v. Nealy

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1 jail so we can more fully discuss the case.

2 THE DEFENDANT: He doesn't have the  
3 address.

4 THE COURT: You're talking about the  
5 district attorney?

6 THE DEFENDANT: My alibi witness. They  
7 don't know her address. He had her job number, phone  
8 number.

9 MR. GRODER: Give the address.

10 THE DEFENDANT: 144 Fairview, Hempstead.

11 MR. JUNKER: Is there an apartment number?

12 THE DEFENDANT: It's a house. Hempstead,  
13 New York.

14 THE COURT: Do you have the name?

15 THE DEFENDANT: Vicky Lewis.

16 THE COURT: Do you want a phone number?

17 THE DEFENDANT: 481-6939.

18 THE COURT: Who is going to arrange for the  
19 defendant to be brought tomorrow?

20 Mr. Junker, you'll do that?

21 MR. JUNKER: The Grand Jury already  
22 arranged for that. I will take care of that.

23 THE COURT: I don't want the alibi witness  
24 and not the defendant.

25 MR. JUNKER: I will double-check, Judge.

CERTIFICATION

I, Hanni J. Planos, certify the foregoing to  
be a true and accurate transcript of my stenographic  
notes.

Hanni J. Planos  
Official Court Reporter

## EXHIBIT 6



STATE OF NEW YORK : NASSAU COUNTY

COUNTY COURT PART XII

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- : IND. # 973N/01

WILLIAM NEALY, :

Defendant. :

- - - - -X

262 Old Country Road  
Mineola, New York  
September 3, 2002

B E F O R E:

HON. RICHARD A. LaPERA,  
County Court Judge.

APPEARANCES:

HON. DENIS DILLON,  
Nassau County District Attorney  
By: WALT JUNKER, ESQ.  
Assistant District Attorney  
For the People

JEFF GRODER, ESQ.  
For the Defendant

- - -

Minutes of Proceedings

- - -

Hanni J. Planos, CSR  
Official Court Reporter

1 THE CLERK: This is People versus William  
2 Nealy, Indictment 973N of '01.

3 Appearances, please.

4 MR. JUNKER: Walt Junker, appearing for the  
5 People, your Honor.

6 MR. GRODER: Jeff Groder, Devane and  
7 Groder, 114 Old Country Road, Mineola.

8 THE COURT: Mr. Groder, the district  
9 attorney has filed an application to determine  
10 whether defendant is eligible for persistent  
11 felony offender, a second violent felony  
12 offender or a second felony offender.

13 MR. JUNKER: Also the primary application  
14 is to have him classified as persistent violent  
15 felony offender in the alternative, if he were  
16 found of the top status.

17 THE COURT: Your papers say eligible  
18 persistent felony offender.

19 MR. JUNKER: May I just have a moment,  
20 Judge?

21 MR. JUNKER: Judge, unless I'm mistaken --

22 THE COURT: You're right. Okay. The top  
23 part. You're correct. Persistent violent  
24 felony offender. And you have the "in the  
25 alternative."

1 MR. JUNKER: Correct, Judge.

2 THE COURT: You want to make the  
3 application?

4 MR. GRODER: Yes, I have an application to  
5 be relieved from the case.

6 I had visited Mr. Nealy last week at the  
7 Rikers Island Correctional Facility. We had  
8 approximately a ten-minute visit. Towards the  
9 conclusion of that visit he indicated he did  
10 not want me to represent him any further at the  
11 hearing, which was coming up today, at which  
12 time I was getting ready to leave.

13 At that time Mr. Nealy reached through the  
14 cage which he was in, separating us, and threw  
15 my tape recorder, which I had previously  
16 obtained authorization to bring in so he could  
17 hear tapes involved in the case, threw that  
18 across the room and threatened to kill me  
19 numerous times, saying that he would hunt me  
20 down and find me, saying he would blow my head  
21 off, that I should relocate; things of that  
22 nature. I feel that based upon those threats I  
23 cannot longer represent Mr. Nealy.

24 I think the case law is also pretty clear  
25 that, you know, given those circumstances, it's

1 improper at this point for me to represent him.

2 THE COURT: DA, do you have any position?

3 MR. JUNKER: We have no objection, Judge.  
4 We rely on the discretion of the Court. I'm  
5 aware of the same case law and am in agreement  
6 with what Mr. Groder mentioned.

7 THE COURT: You're relieved.

8 MR. GRODER: I have two requests, one of  
9 which I already discussed with Mr. Junker. One  
10 is to be listed as a person to be notified in  
11 the event that Mr. Nealy is released so that I  
12 can make arrangements, whatever arrangements I  
13 need to make to protect myself.

14 Also I have a standing request, Judge, for  
15 any and all minutes that are generated from now  
16 until the end of the case, in case of any  
17 subsequent legal action by Mr. Nealy against  
18 myself.

19 I feel that I'll need those in order to  
20 possibly defend against a civil suit.

21 THE COURT: That application is granted.

22 MR. GRODER: Thank you.

23 THE COURT: Mr. Nealy, at this particular  
24 time your attorney has made a motion to be  
25 relieved because he feels that he can't serve

1 as your attorney anymore.

2 My question to you is, can you afford a new  
3 attorney?

4 THE DEFENDANT: No.

5 MR. JUNKER: Judge, if I may, at this point  
6 the People renew our application that we made  
7 prior to the trial of this matter; that would  
8 be that Mr. Nealy does have the funds to pay  
9 for an attorney, and possibly even to pay for  
10 the services that Mr. Groder already rendered  
11 on his behalf.

12 I again mention to the Court that it's my  
13 understanding, after speaking to the parole  
14 officers that were involved in this matter,  
15 that when Mr. Nealy was released 30 day prior  
16 to the event that he's now been convicted of,  
17 at that time his funds at the Great Meadow  
18 Correctional Facility were in the amount of  
19 \$9,743.35.

20 It's also my understanding from parole that  
21 there is a possibility that he had additional  
22 funds that were bequeathed to him when his  
23 mother passed away, possibly totaling up to  
24 \$30,000.

25 We would ask that Mr. Nealy be required to

1 furnish details of information as to what  
2 happened to that money, where he banks --  
3 things of that nature -- prior to a new  
4 attorney being assigned.

5 There was certainly testimony about \$30,000  
6 additional, additional money, during the course  
7 of the trial.

8 THE COURT: What the DA is saying, he  
9 indicates that you may have money to pay for an  
10 attorney.

11 THE DEFENDANT: I have no money. That was  
12 over two years ago.

13 THE COURT: I'm sorry?

14 THE DEFENDANT: He's talking about over two  
15 years ago, and I have nothing.

16 THE COURT: I will not grant the DA's  
17 application. However, I'm going to put this  
18 on -- I'm going to adjourn this. I'm going to  
19 look into it further.

20 We'll get to that money one way or another,  
21 either by civil judgment; somewhere along the  
22 line. So I'm sure we'll get those funds.

23 However, I got to move this along.

24 Do you understand that this is a hearing to  
25 determine whether you are a persistent violent

1 felony offender or in the alternative eligible  
2 persistent felony offender or a second violent  
3 felony offender or a second felony offender?  
4 Do you understand that?

5 THE DEFENDANT: I was never given notice.

6 THE COURT: But your attorney was given  
7 notice.

8 THE DEFENDANT: He never issued me a copy  
9 of whatever.

10 THE COURT: Do you understand that if  
11 you're found guilty as a persistent violent  
12 felony offender I can sentence you to 25 to  
13 life. Do you understand that?

14 THE DEFENDANT: Do I understand that? I'm  
15 not clear on the guidelines of all that.

16 THE COURT: I'm just telling you. I mean,  
17 you give your attorney a hard time, and right  
18 now, you don't have an attorney. If I find you  
19 guilty of persistent violent felony offender, I  
20 can sentence you to 25 years to life.

21 THE DEFENDANT: My lawyer withheld  
22 information from me, and evidence from me. I  
23 could have gotten a plea. This is why I don't  
24 want him to represent me, because I can get a  
25 life sentence.

1 THE COURT: Well, he gave you good  
2 representation during the trial.

3 THE DEFENDANT: But he withheld  
4 documentation from me.

5 THE COURT: What date do you want to put  
6 this on for?

7 MR. JUNKER: I'm going to make one inquiry  
8 of the Court.

9 THE COURT: Yes.

10 MR. JUNKER: I served the Court both with  
11 an original of the voluntary disclosure  
12 statement and a courtesy copy. I would like to  
13 hand a courtesy copy to the defendant.

14 THE COURT: At this particular time I'm  
15 going to give you a copy of the application  
16 that the district attorney has supplied,  
17 outlining your felony convictions. Briefly,  
18 you pled guilty in front of Judge Thorp, you  
19 pled guilty in front of Judge Paul Kowtna.

20 These are the two you rely on; is that  
21 correct?

22 MR. JUNKER: Yes.

23 THE COURT: And there was also -- you pled  
24 guilty in front of a Judge in the city.

25 MR. JUNKER: Correct, Judge. That's



1 correct. That's one of the alternatives  
2 listed.

3 THE COURT: They're the alternative.

4 But the one that you're zeroing in on is  
5 the 1989 and 1995; is that correct?

6 MR. JUNKER: Those dates sound correct,  
7 yes.

8 THE COURT: Let the record reflect that the  
9 defendant has been served with a copy of the  
10 statement by the district attorney showing his  
11 prior convictions.

12 Now, as I mentioned before, if I ascertain  
13 that you are a persistent violent felony  
14 offender the maximum is 25 to life. So you're  
15 looking at extensive jail time.

16 All right. What's the 10th?

17 THE CLERK: Week from today. Next Tuesday.

18 THE COURT: Let's put it on for the 10th  
19 and see if we can get you an attorney on this.

20 September 10th. I'll tell you what we do.  
21 Put it on for -- Hold on for a second. We'll  
22 do it the 10th September 10th, for the  
23 assignment of a new attorney.

24 \* \* \*

CERTIFICATION

I, Hanni J. Planos, certify that the foregoing  
is a true and accurate transcript, only if an  
original, and only if certified by me.

Hanni J. Planos  
Hanni J. Planos, CSR  
Official Court Reporter

Hanni J. Planos, C.S.R.

## EXHIBIT 7

CD-157 03/1/01

DENIS DILLON  
DISTRICT ATTORNEY, NASSAU COUNTY

VOLUNTARY DISCLOSURE NOTICES AND DEMANDS

Defendant #1 William Nealy Court Index # 8309/01 & 8310/01  
 Defendant #2 \_\_\_\_\_ Court Index # \_\_\_\_\_  
 Defendant #3 \_\_\_\_\_ Court Index # \_\_\_\_\_

DISCLOSURE (CPL ART. 240)

(1) Counts and/or Charges:

	<u>Crime</u>	<u>Date</u>	<u>Approximate Time</u>	<u>Place</u>
# 1	<u>120.05(2) PL</u>	<u>4/10/01</u>	<u>02:45</u>	<u>144 Front St., Hempstead, N.Y.</u>
# 2	<u>265.02(1) PL</u>	↓	↓	↓
# 3	<u>120.15 PL</u>	↓	↓	↓
# 4	<u>205.30 PL</u>	<u>4/15/01</u>	<u>04:21</u>	<u>Franklin St. @ Jackson St., Hempstead, N.Y.</u>
# 5	_____	↓	↓	↓
Arrest Information:		<u>4/15/01</u>	↓	↓

- (2) The following statements were made by the defendant, or by any co-defendants to be tried jointly, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him: and the People intend to offer such statements as evidence in chief at trial:

	<u>Defendant # 1</u>	<u>Defendant # 2</u>	<u>Defendant # 3</u>
(A) Oral	<input checked="" type="checkbox"/>	( )	( )
(B) Written	( )	( )	( )
(C) Recorded and transcribed	( )	( )	( )
(D) Recorded but not transcribed	( )	( )	( )
(E) None	( )	( )	( )

All written, oral and transcribed statements are appended unless otherwise noted in Section (13) of this form. Recorded but not transcribed statements will be made available to counsel on a mutually agreed-upon date.

- (3) Any transcripts of testimony relating to this case, given before the Grand Jury by the defendant, or by any co-defendants to be tried jointly, will be provided when available.

01-208

- (4) The following written reports or documents, or portions thereof, concerning physical or mental examinations, or scientific tests or experiments, relating to this case, which were made by or at the request or direction of a public servant engaged in law enforcement activity, or by a person whom the People intend to call as a witness at trial, or which the People intend to introduce at trial, are appended, unless otherwise noted in Section (13) of this form:

- |   |   |
|---|---|
| <input type="checkbox"/> Narcotics Report             | <input type="checkbox"/> Breathalyzer Certification Certificate |
| <input type="checkbox"/> Performance Test Report      | <input type="checkbox"/> Ballistics Report                      |
| <input type="checkbox"/> Breathalyzer Report          | <input type="checkbox"/> Handwriting Analysis                   |
| <input type="checkbox"/> Medical Examiner's Report    | <input type="checkbox"/> Physical Examination                   |
| <input type="checkbox"/> Fingerprint Report           | <input type="checkbox"/> Mental Examination                     |
| <input type="checkbox"/> Serology Report              | <input checked="" type="checkbox"/> Other: <u>Sec #13</u>       |
| <input type="checkbox"/> Central Testing Section Logs | <input type="checkbox"/> - None                                 |

- (5) The following property is in the possession of the People and will be made available to the defendant for inspection, photographing, copying or testing on a mutually agreed-upon date:

☒ Photographs or drawings relating to the case which were made or completed by a public servant engaged in law enforcement activity, or by a person whom the People intend to call as a witness at trial, or which the People intend to introduce at trial.

☒ Tapes or other electronic recordings which the People intend to introduce at trial.

☐ The following property obtained from the defendant, or from any co-defendants to be tried jointly:

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- (6) Except as may be noted below, a review of the file in the office of the District Attorney does not indicate that the People are presently in possession of anything required to be disclosed prior to trial to the defendant, pursuant to the constitutions of New York State or of the United States.

---



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ACF-10

- 7) If, subsequent to the disclosure of the items specified above, additional items, which the District Attorney believes would be subject to disclosure under the provisions of this form, are revealed, such items will be disclosed, unless a protective order to prohibit their discovery would be warranted, in which case a writing to that effect will be provided.

## NOTICES (CPL ART. 710)

- 8) PLEASE TAKE NOTICE that pursuant to Section 710.30 of the Criminal Procedure Law, the People intend to offer evidence of the statements of the defendant referred to in Sections (2) and (3) of this form at the trial of this action.
- 9) PLEASE TAKE FURTHER NOTICE that pursuant to Section 710.30 of the Criminal Procedure Law, the People intend to offer at the trial of this action testimony regarding an observation of the defendant, either at the time or place of the commission of the offense or upon some other occasion relevant to the case, by a witness who has previously identified the defendant as such, as follows:

<p><i>No Hearing Issues</i></p> <p>Witness # 1</p> <p>Date: <u>4/15/01</u></p> <p>Approximate Time: <u>04:21</u></p> <p>Place: <u>Franklin St @ Jackson St, Hempstead, N.Y.</u></p> <p>Manner: ( ) Line-up</p> <p>( ) Show up</p> <p>( ) Photographs</p> <p>(X) Other: <u>Confirmatory</u></p>	<p><i>No Hearing Issues</i></p> <p>Witness # 2</p> <p>Date: <u>4/15/01</u></p> <p>Approximate Time: <u>04:25</u></p> <p>Place: <u>Hempstead H.Q.</u></p> <p>Manner: ( ) Line-up</p> <p>( ) Show up</p> <p>( ) Photographs</p> <p>(X) Other: <u>Confirmatory</u></p>
--	---

## DEMANDS (CPL ARTS. 240 AND 250)

- 10) PLEASE TAKE NOTICE that in accordance with the provisions of Section 240.30 of the Criminal Procedure Law, the People hereby demand that within fifteen days of the date of service of this demand, you disclose and make available to the District Attorney of Nassau County for inspection, photographing, copying or testing: (a) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparisons, made by or at the request or direction of the defendant; if the defendant intends to introduce same at the trial of this action, or if the defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if same was made by a person, other than the defendant, whom the defendant intends to call as a witness at trial; and (b) any photograph, drawing, tape, or other electronic recording which the defendant intends to introduce at trial.
- 11) PLEASE TAKE FURTHER NOTICE that in accordance with the provisions of Section 250.20 of the Criminal Procedure Law, the People hereby demand from you that if you intend upon the trial of this action to offer, for any purpose whatever, testimony which may tend to establish the defendant's presence elsewhere than at the scene of the crime or crimes with which he is charged, at the time of their commission, you must, within eight days from the date of service of this demand, serve upon the District Attorney of Nassau County, and file with this Court, a copy thereof, a "notice of alibi" which shall set forth in detail the place or places where the defendant claims to have been, together with the names, post office addresses, residences and places of employment and the addresses thereof of the witnesses upon whom he intends to rely to establish his presence elsewhere than at the scene of the crime or crimes at the time of their commission.

NCF-10

If at the trial of this action you call such an alibi witness without have served a notice of alibi pursuant to the demand, or, if having served such a notice you call a witness not specified therein, a motion will be made pursuant to the provisions of Section 250.20 of the Criminal Procedure Law to exclude any testimony of such witness relating to the alibi defense.

- (12) PLEASE TAKE FURTHER NOTICE that in accordance with the provisions of Section 250.10 of the Criminal Procedure Law, the People hereby demand that if you intend upon the trial of this action to present psychiatric evidence, you must, not more than thirty days after entry of the defendant's plea of not guilty, serve upon the District Attorney of Nassau County and file with this Court a written notice of your intention to do so.

- (13) Comments: ① Page 5 of VDFs

② Felony Complaints (2)

③ Redacted PDCN 81

④ PDCN 79s (2)

⑤ Form 330

⑥ LOCAL

⑦ NYSES (10 pages)

Nothing in these VDFs shall act as a stipulation or a waiver.

(14)

Date

5/10/01

Form prepared by

Assistant District Attorney

Walt M. Junker

Form served on the Court by

Form served on \_\_\_\_\_ by \_\_\_\_\_

Form served on \_\_\_\_\_ by \_\_\_\_\_

Form served on \_\_\_\_\_ by \_\_\_\_\_

01-108

Oral Statement of Defendant # 1

The defendant stated, in sum and substance, that:

I didn't cut anybody. Stay the fuck away from me

Date: 4/15/01 <sup>Approx</sup> Time: 04:17 Place:

Person to whom statement was made: Not Entitled To

Oral Statement of Defendant # 1

The defendant stated in sum and substance, that:

He wants to move and he needs a travel permit to South Carolina. He had contact with the police on 4/9/01 at 12:00 midnight in Hempstead. There was a fight with two guys at the Bamboo Lounge in Hempstead.

Date: 4/11/01 <sup>Approx</sup> Time: 2pm Place: 250 Fulton Avenue, Hempstead, N.Y.

Person to whom statement was made: Not Entitled To



## EXHIBIT 8

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU : PART 37

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

Indictment No.  
973N/2001

6 WILLIAM NEALY,

7 DEFENDANT.  
8 -----X

Mineola, New York  
January 28, 2002

9  
10 B E F O R E: HON. VICTOR ORT  
11 Supreme Court Justice

12  
13 A P P E A R A N C E S:

14 HON. DENIS DILLON  
15 District Attorney, Nassau County  
16 BY: WALT JUNKER, ESQ.  
Assistant District Attorney  
For the People

17  
18 DeVANE & GRODER  
114 Old Country Road  
Suite 345  
19 Mineola, New York 11501  
Attorney for Defendant  
20 BY: JEFF GRODER, ESQ.

21  
22 M I N U T E S O F P R O C E E D I N G

23  
24  
25 Kathi A. Fedden  
Official Court Reporter

1 THE CLERK: This is on for trial,  
2 Indictment 973N of 2001, William Nealy.

3 Appearances, please.

4 MR. JUNKER: Walt Junker appearing for the  
5 People, Your Honor.

6 MR. GRODER: Jeff Groder, DeVane & Groder,  
7 114 Old Country Road, Suite 345, Mineola for  
8 Mr. Nealy.

9 THE COURT: Good afternoon. Welcome to  
10 the part. This is a Judge LaPera case that was  
11 assigned to me through Judge Wexner.

12 MR. JUNKER: That's correct, Judge.

13 THE COURT: Are you ready to proceed?

14 MR. JUNKER: Judge, People at this time,  
15 while we have previously been ready, are not ready  
16 to proceed with trial today. I discussed last night  
17 one of my witnesses decided to go to Puerto Rico  
18 yesterday morning. I can't answer ready for trial  
19 at this point without that witness. I'm asking for  
20 a week adjournment to Monday, February 4th.

21 THE COURT: What's the defense position?

22 MR. GRODER: Defendant's position is that  
23 the defendant is ready for trial. Defendant has  
24 been ready for trial. Judge, I have been since  
25 November.

1 Judge, I have been in contact with  
2 Mr. Junker all week leading up to today. We've been  
3 discussing getting ready for the case. I came in  
4 all weekend to finalize my preparations for the  
5 case. This morning I come into my office and I have  
6 a message from Mr. Junker from Sunday that his  
7 witness has gone to Puerto Rico. I mean, that's all  
8 well and good, but my client has been in jail since  
9 April of last year and he should go to trial. And  
10 that's really what we're here to do.

11 I understand there is very little that the  
12 Court can do at this point except order Mr. Junker  
13 to go to trial, which is what I would ask the Court  
14 to do. I don't know whether Mr. Junker knows when  
15 this witness is returning. I don't want to have the  
16 same thing next week.

17 THE COURT: All right. I do say,  
18 Mr. Junker, I'm going to grant the application only  
19 because you can't go to trial without your  
20 witnesses. Obviously, the time is going to be  
21 charged to the People. I don't know what the 30.30  
22 ramifications are of this, so. It's the first time  
23 I have ever seen the case officially. I'm going to  
24 put it back in front of Judge LaPera for February  
25 4th. I just ask you if you find out before that

1 date that your witness is not available, please  
2 contact Mr. Groder. It's the civil thing to do.  
3 Give him as much notice as possible so he can get  
4 ahold of his client and let his client know what's  
5 going on and he doesn't have to be yanked back and  
6 forth. I understand he's in Suffolk County.

7 MR. JUNKER: Right, Judge. I contacted  
8 Mr. Groder as soon as I could, Judge.

9 MR. GRODER: Judge, there is one or two  
10 other things. Since this matter was on for trial  
11 today and in order to avoid any possible delay, I  
12 would ask that this Court direct Mr. Junker to turn  
13 over the Rosario material for the trial so that I  
14 can have adequate time to prepare and possibly avoid  
15 a needless delay next week when we start.

16 MR. JUNKER: Judge, I have already turned  
17 over additional discovery material to Mr. Groder  
18 today. If I can just list it quickly for the  
19 record. That being a copy of police car photos, a  
20 parole photo of the defendant, a radio tape of a  
21 phone transmission and a radio transmission of  
22 Hempstead Police Department. A Department of Motor  
23 Vehicles photo that I subpoenaed and I also told  
24 Mr. Groder of a possible name of a possible  
25 accomplice that we had since discovered that I had

1 previously listed as unknown in discovery responses.  
2 I have turned that over to Mr. Groder today and I  
3 will turn over the Rosario material on the day the  
4 trial starts, as is the usual custom, although  
5 technically he's not entitled to it until the first  
6 witness takes the stand.

7 THE COURT: He's not legally entitled to  
8 it. Morally perhaps, because the People are  
9 requesting the adjournment. The Court does not deal  
10 in moralities though. I have to deny the  
11 defendant's request.

12 Again, if there is anything that you can  
13 give him that will not prejudice your case, let him  
14 have it a little earlier, it only helps everybody.  
15 We don't have to have the delays in the middle of  
16 the trial. I may end up with the trial, I don't  
17 know.

18 MR. JUNKER: I understand.

19 THE COURT: I appreciate it when Rosario  
20 is turned over earlier.

21 MR. JUNKER: I recommended previously to  
22 Judge LaPera that the case be set down for Friday so  
23 we can do the pre-trial and he can have the Rosario  
24 to read over the entire weekend.

25 THE COURT: Very good.

1 Just to reiterate, the case is on February  
2 4, 2002 before Judge LaPera. Good luck, whatever  
3 happens.

4 MR. GRODER: Judge, there is one other  
5 item. We subpoenaed certain photographs from the  
6 Hempstead Police Department. I was given them by  
7 Judge LaPera's office this morning. It's not my  
8 practice to hold on to original evidence or original  
9 property of the police department, which is what  
10 this is. I would ask that it be placed in the Court  
11 file or be kept with the Court, since it is  
12 subpoenaed documents.

13 THE COURT: Subpoenaed to the Court?

14 MR. GRODER: Correct, that's the only one  
15 I can issue.

16 THE COURT: Fine, we'll take it.

17 MR. GRODER: The other thing is that the  
18 subpoena -- I have indicated to Mr. Junker that, and  
19 he knows this, that the subpoena called for the  
20 actual book, the physical book, itself that those  
21 photos were contained in, the mug shots and  
22 Mr. Junker has been kind enough to be my kind of  
23 liaison between my subpoenas and the Hempstead  
24 Police Department and he's indicated that he'll  
25 advise them what the subpoena calls for.



1 MR. JUNKER: Right. Judge, I think one of  
2 those photos has the book that it came on. It has a  
3 little sticky note. Can I get the book number?

4 MR. GRODER: There is a sticky note on the  
5 picture.

6 MR. JUNKER: Just to make certain the  
7 right book is brought the next time.

8 THE COURT: So, as far as you know,  
9 Mr. Junker, there is no applications to quash or  
10 anything on behalf of the Hempstead Police  
11 Department?

12 MR. JUNKER: No, Judge, I think they  
13 misunderstood the subpoena.

14 THE COURT: Do you have the information?

15 MR. JUNKER: Yes, I do, Judge, and I'll  
16 make sure they understand the subpoena when it's  
17 reissued by Mr. Groder.

18 THE COURT: Thank you.

19 Counsel, would you approach for one  
20 second? It's a totally unrelated matter.

21 (Whereupon, a discussion was held off the  
22 record.)

23 MR. GRODER: Judge, may I put one other  
24 thing on the record, please? Judge, there is an  
25 issue that's arisen in the case with regard to a



1 particular detective, his name is Salerno, with the  
2 Hempstead Police Department and I'm requesting the  
3 notes of Detective Salerno if, in fact, they contain  
4 exculpatory evidence in favor of my client relying  
5 on cases that actually my client has supplied to me.  
6 People versus Finkel, 103 Misc.2d 985. People  
7 versus White, First Department case, 200 A.D.2d 351  
8 and Second Department case, People versus Turner, 48  
9 A.D.2d 674.

10 THE COURT: You're claiming this is Brady  
11 not Rosario material.

12 MR. GRODER: Correct.

13 THE COURT: Mr. Junker, you know anything  
14 about this?

15 MR. JUNKER: Judge, first of all, I'm not  
16 aware of any Brady material or it would have been  
17 turned over today or as soon as I knew about it.  
18 Secondly, I'm not even aware such notes exist. And  
19 third, if anything like that existed and I didn't  
20 think it was Brady, it would be turned over as  
21 Rosario material prior to the trial if I were to  
22 call that person as a witness, which I'm not certain  
23 I'm going to do.

24 THE COURT: Is he on the witness list?

25 MR. JUNKER: My witness list currently,

1 no, Judge.

2 MR. GRODER: He's on mine.

3 THE COURT: You have nothing in your  
4 possession you can turn over?

5 MR. JUNKER: Correct, Judge. I don't  
6 believe such notes exist.

7 THE COURT: Has a subpoena been issued for  
8 the notes?

9 MR. GRODER: For the witness, but for next  
10 Monday the notes will be subpoenaed as well.

11 THE COURT: You will make it a duces tecum  
12 as well.

13 MR. GRODER: Yes, Judge.

14 THE COURT: I don't know if it has to be  
15 so ordered.

16 MR. GRODER: Judge LaPera will sign it.

17 THE COURT: Either he or I will sign it.

18 MR. GRODER: If I can request the minutes  
19 of this proceeding pursuant to 18b?

20 THE COURT: Certainly.

21 Anything further?

22 MR. GRODER: No.

23  
24 \*

\*

\*

C E R T I F I C A T I O N

I hereby certify the within to be a  
true and accurate transcription of my  
stenographic notes in the above proceeding.

Kathi A. Fedden  
Kathi A. Fedden

12th floor  
HE 1371-01

201 CR00271 37

SUBJECT: "PRINCE" BLOOD, SCAR ON  
LEFT SIDE OF FACE, LT. EYE  
VERY SHORT HAIR, STOCKY BUILD  
ABOUT 28 YRS OLD, LIVES WITH  
SISTER ON BEDFORD, ON PARKER  
JUST DID TIME IN NYC

ANYONE ALFRED: LIVES ON TERRACE WITH  
HIS UNCLE GEORGE ALFRED +  
MOTHER ~~SISTER~~ SHIRAZ ALFRED, "BLOOM"  
GAVE PRINCE THE KNIFE OR RAZOR  
ABOUT 22 YRS OLD.

VICTIM'S BROTHER: RONALD LANIER IS A  
NASSAU COUNTY C.O. AND HE IS A  
TWIN OF VICTIM. SUBJECTS  
STATED "DAMO CO" WHICH IS  
A BLOOD SLANG.

M; GOT 45 STITCHES ON FACE

## EXHIBIT 9

4-10-08

ON April 10 around 1:00 AM in the morning, I left my mother's House which is on 20 Bedell St. Hempstead NY 11550. Me & MR. William was together. He was going on the Hikes, and I was going on PARKSIDE with my friends and to meet my Brother. Which ended up leading me to the BAMBOO Lounge. That's when I arrived to enter a gambling game. At that time me and Ratsy got into an argument over money. Later his Brother joined and that's when they attempted to jump me, I recieved a knife from someone in the crowd who I knew from Terrace who I later on who he was from on Bedell. I attempted to argue a while when I felt threatened by them and I cut MR. Ronald

LANIER ACROSS THE FACE. I went home around 3:00 AM looking for my uncle MR. NEALY. My mother told me he wasn't there and what's the matter. I refused to tell her just saying that I have to tell him something the next morning my uncle came to my mother house around 10:00 AM with all of his clothes and belongings. I told him what happened and who the kids were. He told me what and everything happened and who the kids were. He told me he didn't know them, he said he might of knew Latsy from the Barber shop. He told me he would try to resolve the problem. The next thing they said William cut the man and I was scared I just can't let him go to jail to protect me, because my uncle had no knowledge of LHOA I had been released from



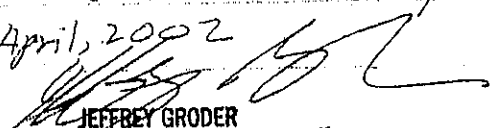
South OAKS MENTAL HOSPITAL, And my  
Uncle Promised that I would go this  
far but he is not guilty of this  
Crime. I Cimmarron Patterson  
state that I cut Mr. Ronald Lanier  
on April 10 2001 ~~on~~ on a Tuesday  
morning Around 1:30-2:00

Cimmarron Patterson  
Cimmarron Patterson

I Swair in this statement everything  
is true

Sworn to before me this 10th day  
of April, 2002

Cimmarron Patterson

  
JEFFREY GRODER  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 4976075  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES JANUARY 14, 2003



A F F I D A V I T

STATE OF NEW YORK

COUNTY OF CAYUGA

} ss:  
1)

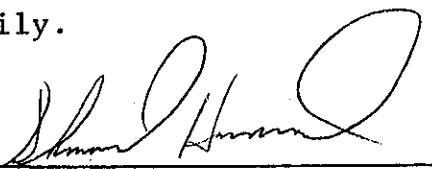
and says:

I, SHAMEL HOWARD, being duly, sworn, deposes

1. That I was an eye witness to an incident that occurred on April 10, 2001 at 144 Front Street, Hempstead, New York, "Bamboo Lounge".

2. I, along with Antoine Alfred, was playing dice with "CIM", "Patsy", "Donald" and a few other people. An argument broke out between CIM and Patsy. CIM and Patsy then started fighting and Patsy brother Donlad jumped in. A few other people broke up the fight. I then left with Antoine Alfred.

3. The person convicted of this incident William Nealy, was not there when this incident occurred. I along with Antoine Alfred was incarcerated at Nassau County Jail during the months of February and March of 2002. If a lawyer representing William would have asked me to testify on his behalf, I would have done so, and given the exact same statement contained in this sworn affidavit. I swear that the contents of this statement are true and that I make it freely and voluntarily.

  
SHAMEL HOWARD

SWORN TO BEFORE THIS  
13<sup>th</sup> DAY OF November, 2007

  
NOTARY PUBLIC SIGNATURE

ANDREA ABBOTT  
Notary Public, State of New York  
Qualified in Onondaga County  
No. 01AB5074416  
Commission Expires March 17, 2011

INSTRUCTIONS: Deponent must place signature immediately after his/her narrative statement which shall include a statement of non-permission when applicable. Police Officer will complete boxed area of form and will witness the deponent's statement by placing signature immediately below the deponent's signature.

Case Report No. HE-1370-01	D.D. No.	Defendants Name if Known	Relationship of Deponent to Property	
Date & Time of Deposition 04-10-01 0245	WITNESS	Rank PO.	Name Printed RODRIGUEZ	Serial No. 1170 Command HEMP

## NOTICE

ANY FALSE STATEMENT MADE IN THIS DEPOSITION IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

I am DONALD LANIER (10-11-63) I have read and understand the above notice.

On the 10 day of APRIL 19 2001 at about 245 ☐ AM ☐ PM I WENT TO PICK UP MY BROTHER  
AT THE BAMBA LOUNGE LOCATED AT 144 FRONT ST HEMPSTEAD N.Y. WHEN  
I ARRIVED THERE, MY BROTHER WAS IN AN ARGUMENT WITH  
ANOTHER PERSON. I TOLD MY BROTHER TO FORGET ABOUT IT, LET'S GO HOME  
~~HE~~ I THEN HEARD THE PERSON WHO MY BROTHER WAS ARGUING  
WITH ASK ONE OF HIS FRIENDS THAT WAS WITH HIM TO "HAND  
ME MY SHET" I THEN SAW HIM REACH OVER AND GRAB SOMETHING  
FROM OUT OF THAT PERSONS HAND. HE THEN BEGAN TO SWING AT  
ME WITH THIS OBJECT. HE HIT ME ON MY FACE WITH WHATEVER  
IT WAS THAT HE HAD IN HIS HAND, AND CAUSED A LACERATION  
TO MY FACE, WHICH IS CAUSING ME SEVERE PAIN AND IS  
GOING TO REQUIRE STITCHES. THE PERSON THAT DID THIS TO ME  
IS A MALE BLACK 30 YRS OLD 5'9" TALL 210 LBS AND WAS WEARING  
BLACK PANTS, BLACK JACKET, BLACK HAT, AND BLACK BOOTS. I DID NOT  
WANT THIS PERSON TO ASSAULT ME AND I WANT HIM ARRESTED. I AM  
GIVING THIS STATEMENT TO P.O. RODRIGUEZ SHNO 169 WHO IS WRITING  
IT FOR ME AND IT IS THE TRUTH.

X Donald Lanier

X P.O. Juan Rodriguez SHNO 169

## M.O. INFORMATION

## TYPE OF EVIDENCE AT SCENE

- 151 Blood stains  
152 Footprints  
153 Human excrement  
154 Latent prints  
155 Tire tracks  
156 Tools, equipment, etc.  
157 Weapons  
158 Other

## PROPERTY TAKEN/STOLEN

- 159 Concealable  
160 Non-concealable

## TIME OF DAY

- 111 Daylight  
112 Darkness  
113 Unknown

## WEATHER

- 121 Clear  
122 Cloudy  
123 Rain  
124 Fog  
125 Snow  
126 Unknown

## POINT OF ENTRY

- 131 Front  
132 Rear  
133 Left side  
134 Right side  
135 Roof  
136 Other (Specify)

## MODE OF ENTRY (Check 1)

- 141 Window  
142 Door-wood

- 143 Door-glass window  
144 Door-screen  
145 Door-sliding glass  
146 Roof-skylight  
147 Through roof  
148 Through wall  
149 Unknown  
170 Other

## (Check 1)

- 161 Broke glass  
162 Broke down  
163 Cut open  
164 Left open  
165 Unlocked key

## SAFES

- 181 Interior lights on  
182 Exterior lights on  
183 Bars or grates  
184 Dog  
185 Employee present  
186 Guard or watchman  
187 Security fence  
188 Alarm  
189 Photo or camera  
191 None  
192 Other  
211 None  
212 Carried away  
213 Drilled or punched  
214 Explosive

- 216 Torch  
217 Rip or peeled  
221 Ransacked  
222 Malicious damage caused  
223 Premise occupied  
224 Premise adjacent to school, dump, parkway, etc.  
225 Previously burglarized  
226 Suspicious phone calls prior to burglary  
227 Other

## SUBJECT'S WEAPON USED

- 231 Automatic  
232 Revolver  
233 Blue steel  
236 Chrome-nickle  
238 Double barrel  
241 Sawed off  
171 Knife  
243 Other

## SUBJECT PRETENDED TO BE

- 252 Customer/client  
253 Delivery person  
254 Disabled motorist  
255 Drunk  
256 Hitchhiking  
257 Injured/ill  
258 Messenger  
259 Needed a phone  
261 Police/law enforcement officer  
262 Repairman  
263 Salesperson  
264 Seeking directions

## SUBJECT'S ACTIONS OR PECULIARITIES

- 281 Alarm silenced/disabled  
282 Ate/drank on premise  
283 Blindfolded/bound victim  
285 Called victim by some name  
286 Deceased/victim  
289 Disabled phone  
291 Indications that a technical skill was used  
294 Left his/her tools  
295 Repeats key words or phrases  
296 Told not to call police  
297 Tripped alarm, returned later  
299 Used demand note  
311 Used female accomplice  
312 Used male accomplice  
314 Victim opening or closing store or business  
315 Other  
172 Used 1 accomplice  
173 Used 2 accomplice  
174 Used 3 accomplice  
175 Abducted victim  
176 Assaulted victim(s)  
177 Raped/sodomized victim  
178 Used victim's car  
344 Drugged/intoxicated  
SUBJECT'S METHOD OF ESCAPE  
361 Car  
362 Foot  
363 Motorcycle  
364 Truck  
365 Unknown  
179 Bicycle

## PHYSICAL DESCRIPTION

## SUBJECT 1

- Male  
Female  
White  
Black  
Oriental  
American Indian/Eskimo

30

5'9"

210

HEAVY

BLACK

AGE

HEIGHT

WEIGHT

BUILD

HAIR (Color, Type, Length)

COMPLEXION

FACIAL HAIR

FACIAL ODDITIES/SCARS

EYE COLOR

TEETH

FACIAL JEWELRY/ADORNMENTS

DEFORMITIES/SCARS

TATTOO (Location/Description)

SPEECH

GANG/GROUP AFFILIATION

MISCELLANEOUS

PANTS LONG (Type/Pattern/Color)

SHORTS (Type/Pattern/Color)

SHIRT/SWEATER (Type/Pattern/Color)

COAT/JACKET (Length/Type/Pattern/Color)

HAT (Type/Pattern/Color)

FOOTWEAR (Type/Pattern/Color)

WOMAN'S CLOTHES (Type/Pattern/Color)

## SUBJECT 2

- Male  
Female  
White  
Black  
Oriental  
American Indian/Eskimo

## EXHIBIT 10

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU : CRIMINAL PART XII

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

Indictment No.  
973N-2001

WILLIAM NEALY,

DEFENDANT.  
-----X

Mineola, New York  
October 1, 2001

B E F O R E: HON. RICHARD A. LAPERA  
County Court Judge

A P P E A R A N C E S:

HON. DENIS DILLON  
District Attorney, Nassau County  
BY: WALT JUNKER, ESQ.  
Assistant District Attorney  
For the People

DEVANE & GRODER  
114 Old Country Road  
Mineola, New York 11501  
BY: JEFFREY GRODER, ESQ.  
Attorney for the Defendant

Christa Flash, R.P.R.  
Official Court Reporter

1 THE CLERK: Indictment number 973N of the year  
2 2001, People v. William Nealy.

3 Appearances for the record, please, for the  
4 People.

5 MR. JUNKER: Walt Junker appearing for the  
6 People, your Honor.

7 THE CLERK: For Mr. Nealy?

8 MR. GRODER: Jeff Groder, Devane and Groder,  
9 114 Old Country Road, Mineola.

10 Your Honor, if it's all right, we'll do it  
11 from here.

12 THE COURT: Sure.

13 MR. GRODER: The reason why I had been in  
14 touch with your chambers after the hearing is after  
15 having visited my client, he raised several issues he  
16 wanted to address to the Court, which he's allowing me  
17 to do that for him on his behalf. I would like to  
18 address those issues now.

19 First, Judge, is that my client indicates that  
20 he is preparing motions at the jail, and in order to  
21 prepare them and to get them properly notarized and  
22 served, he's requesting his commitment be marked for  
23 daily access to the law library.

24 THE COURT: I'll give him access to the  
25

1 library. I'll put down daily. I thought I originally  
2 had given that to him. Okay. If the sheriff doesn't  
3 give it to him, let me know. I have no problem with  
4 that at all.

5 THE DEFENDANT: I haven't been able to--

6 THE COURT: I'll see to it. I have no problem  
7 with that at all.

8 MR. GRODER: Secondly, Judge, is more of a  
9 Brady issue. It's my client's position that the  
10 District Attorney should be required to turn over any  
11 reports that contain a description, or lack of  
12 description, by the complaining witness in this case,  
13 because it's our contention that on the date of the  
14 assault, the complainant failed to give any physical  
15 description of his assailant. When there is no reason  
16 to believe that the witness' observations were not  
17 recorded or have since been forgotten, his opportunity  
18 to observe may be entitled to little or no significance.  
19 The People bear a heavier burden to show by other  
20 circumstances that the witness formed a firm image of  
21 the defendant and that this recollection persists. The  
22 defendant is entitled to these pieces of exculpatory  
23 evidence, especially since the complainant never  
24 identified the defendant on April 10th, which was the  
25 date of the assault, or made mention of the defendant's

1 unique characteristics such as scars to the right side  
2 and left side of his face and his missing front tooth.  
3 So that's his second request with regard to the issues  
4 he's raising.

5 His third request is, I've already discussed  
6 this with the Assistant District Attorney, that he be  
7 given or be provided with a color mug shot of the  
8 defendant. The defendant contends it is not actually  
9 him in the photograph. The District Attorney indicates  
10 that he will provide me with actually two photos, one  
11 for myself and one for my client. My client is  
12 requesting this-- I think we'd be entitled to it  
13 anyway-- but he is requesting it because he believes  
14 that the police displayed this photograph to the  
15 complainant prior to his arrest on April the 15th,  
16 causing the defendant to be misidentified by the  
17 complainant to support this allegation.

18 The complainant went from making no  
19 identification on April the 10th to making an alleged  
20 positive identification on April 15th. It's my client's  
21 position something happened in that five-day period  
22 causing the complainant to identify the defendant as his  
23 assailant, and the defendant believes it was the  
24 displaying of this mug shot that resembles the defendant  
25 to cause the misidentification of the defendant.



1           The defendant is not-- further, the defendant  
2           is not known to any of the prosecution witnesses, and he  
3           requests finally, going back to the previous issue, he's  
4           requesting an adjournment for an opportunity to submit  
5           his motions before any other proceedings take place in  
6           this case.

7           THE COURT: Okay. You're going to file that  
8           or give that to the Court or--

9           MR. GRODER: It's on the record.

10          THE COURT: Okay. I don't have a problem with  
11          that.

12          MR. GRODER: It's on the record, Judge.

13          THE COURT: DA, you got that? We're going to  
14          need copies of this.

15          MR. GRODER: I'm requesting the minutes  
16          anyway.

17          MR. JUNKER: The People also.

18          THE COURT: Mr. Nealy, okay. I'll entertain  
19          your motion at this time. Okay? But I'd like to talk  
20          to you about something. Okay? Whether you take a plea  
21          or you don't take a plea, I want to outline certain  
22          things for you. Okay?

23                 I read the record. I read the Grand Jury  
24          minutes. At the time of the alleged incident, you guys  
25          were playing dice. There was a little bit of gambling

1 going on. All right? Now, I'm just saying in the event  
2 you're found guilty, okay, and in the event you are  
3 found to be a persistent felony offender, you can get 25  
4 years to life, 25 years to life.

5 Now, the District Attorney, I think, advised  
6 you through your attorney and has advised my law clerk  
7 if you want to take a plea, I would agree to a  
8 commitment of five years. Now, you know, being a  
9 gambler, you like odds in your favor. These odds are in  
10 your favor. You may win the case, don't get me wrong,  
11 but your exposure, your minimum, is 15 to 25.

12 MR. GRODER: It's 12 years to life as a  
13 persistent felony--

14 THE COURT: The maximum could be 25 to life.  
15 So there's-- if you're really a true gambler, your odds  
16 are not that good here. I'm saying to you, you don't  
17 have to make a decision now, but it's something for you  
18 to think about. That's all I'm saying to you. Don't  
19 say anything. It's something for you to think about.  
20 You may take the position, Judge, I wasn't there, I  
21 didn't do it, I want to go to trial. Fine. That's up  
22 to you. I've got no problem with that, but I just want  
23 to bring to your attention what your exposure would be.  
24 I'm not saying that's what it's going to be, but it  
25 could be. That's all I'm mentioning to you. It's

1 something to think about. That's all I'll say. Okay?

2 So--

3 MR. JUNKER: Judge, I want to make one thing  
4 clear for the record. We were going to recommend no  
5 less than six. My understanding is that the Court was  
6 going to commit to the five years. I want to make that  
7 clear for the record. The offer is still open today, as  
8 I understand it, but I'm not going to guarantee it's  
9 going to stay open. I'll keep it open for another date  
10 since you want to give the defendant time to think about  
11 it. That's fine. At some date it will be withdrawn.

12 THE COURT: That's something for you to think  
13 about. You don't have to think about it. Just think  
14 about it. You don't even have to tell me no, yes,  
15 maybe. I'm just outlining on the record what your  
16 possible penalties could be here.

17 October 15th. All right?

18 MR. GRODER: That's fine, Judge.

19 THE COURT: October 15th for decision.

20 THE CLERK: Custody status is continued,

21 Judge?

22 THE COURT: Yes.

23 THE CLERK: Officers, take charge, please.

24 THE COURT: Produce the defendant. Make sure  
25 you write on that commitment daily privileges to the

People v. Nealy

8

1 library.

2  
3 \* C E R T I F I C A T I O N \*

4 The foregoing is certified to be a true and  
5 accurate transcript of my original stenographic notes for the  
6 above-mentioned proceedings.

7 Christa Flash

8 Christa Flash, Official Court Reporter  
9 Notary Public, State of New York  
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ACF-10

# EXHIBIT 11

G.M.  
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STATE OF NEW YORK

COUNTY COURT : NASSAU COUNTY, XIV

THE PEOPLE OF THE STATE OF NEW YORK :

- versus -

WILLIAM NEALY,

Defendant

X

: 973N/01

: 6045323Q

:

X

February 11, 2003

262 Old Country Road  
Mineola, New York

B E F O R E:

HONORABLE RICHARD A. LA PERA,  
County Court Judge

A P P E A R A N C E S:

HON. DENIS DILLON  
Nassau County District Attorney  
BY: WALT JUNKER, Esq., of Counsel  
Assistant District Attorney  
For the People

RICHARD BARBUTO, ESQ.  
33 Willis Avenue  
Mineola, New York 11501  
For the Defendant

HEARING & SENTENCE

RICHARD W. BARRY  
Senior Court Reporter

1 THE CLERK: People versus William Nealy,  
2 indictment 973N of '01.

3 Mr. Nealy, you are the same William Nealy who  
4 after a jury trial was convicted on March 12th, 2002 of  
5 the following: Assault in the first degree, criminal  
6 possession of a weapon in the third degree, menacing in  
7 the third degree, and resisting arrest, is that you,  
8 sir?

9 THE DEFENDANT: No assault in the second  
10 degree.

11 THE COURT: Are you the same person, sir?

12 THE DEFENDANT: Yes, yes.

13 THE COURT: All right. At this particular  
14 time, this is a continuation of a hearing in order to  
15 ascertain if the defendant is a persistent violent  
16 felony offender or alternative, eligible persistent  
17 felony offender.

18 MR. JUNKER: Judge, I just want to put on the  
19 record, the People are ready.

20 The statement by the Court is correct. It is  
21 persistent violent felony offender hearing with the  
22 other matters being held in the alternative pending the  
23 Court's decision.

24 THE COURT: And, at this particular time, the  
25 People have presented their case, and have rested,

1 correct?

2 MR. JUNKER: Correct, Judge.

3 THE COURT: The last time we had the  
4 defendant indicate that he may want to testify. Did  
5 you want to put something on the record first, Mr.  
6 Barbuto?

7 MR. BARBUTO: Yes, Judge, I did.

8 The last time the case was on, I made a  
9 statement that Mr. Nealy and I differed on the state of  
10 the law. So, that nobody thinks that I am acting in an  
11 adversarial way to my client, that was the disagreement  
12 more or less with respect to tactics more than  
13 anything.

14 After seeing Mr. Nealy, we are prepared to  
15 proceed this morning. I have every intention of  
16 representing him to the best of my ability. I want to  
17 make that clear for the record.

18 THE COURT: Okay.

19 In other words, I think the difference was,  
20 that Mr. Nealy indicates he thinks he should be  
21 sentenced under the old law and the District Attorney  
22 naturally disagrees with that.

23 MR. BARBUTO: That's correct.

24 THE COURT: Was that the-- was that your  
25 disagreement on that?



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MR. BARBUTO: Pretty much sir.

THE COURT: With regard to you and your client.

Mr. Nealy what is your pleasure, do you want to submit some papers or would you like to testify?

THE DEFENDANT: I would like to do both. The first thing I wanted to do, I wanted to address the guidelines. I brought the legal documentation.

THE COURT: Do you want to submit them into evidence?

THE DEFENDANT: It is just a portion of it that I wanted to submit into evidence. Dealing with the-- dealing with the statutory-- dealing with the 1995 amendment.

THE COURT: Mark that into evidence.

Is that the defendant's first piece of evidence, I think it is.

MR. BARBUTO: I am not sure.

MR. JUNKER: Judge, I have the previously admitted evidence right here. I believe that will be the first defense document. Let me double check.

THE COURT: We will mark that Defendant's Exhibit A.

THE CLERK: Your Honor, I was looking at the book.

1 THE COURT: Is this the trial?

2 THE CLERK: This is marked continued hearing,  
3 that we started back, it should be dated on the top on  
4 11/14/02. This stuff has been marked.

5 MR. BARBUTO: I believe it is B, Judge.

6 THE COURT: This is Defendant's Exhibit B.  
7 We will mark this into evidence.

8 COURT OFFICER: Defendant's Exhibit B in  
9 evidence.

10 (So marked.)

11 THE COURT: All right. He wants to testify?

12 MR. BARBUTO: Do you want to testify?

13 THE DEFENDANT: Yeah.

14 THE COURT: Let's swear him in.

15 W-I-L-L-A-I-M N-E-A-L-Y, having been first duly sworn, took  
16 the stand and testified as follows:

17 THE COURT: All right. What do you want to  
18 tell this Court, Mr. Nealy.

19 THE DEFENDANT: I wanted to tell this Court,  
20 well, I wanted to clarify something dealing with the  
21 sentencing guidelines. That is the first thing I  
22 wanted to do.

23 THE COURT: Fine.

24 THE DEFENDANT: If you-- I need to know  
25 clearly what is my minimum. I know my maximum is. I

1           need to know what my minimum is according to the law.

2                       Now if you are telling me my minimum is  
3           twelve and that is the less I can get. I won't contest  
4           the hearing if that is factual. I need to know what is  
5           the factual law on it.

6                       The assault second that I got in the 1995,  
7           there was no violence. Actually there was no violence  
8           in that case. The police officer as the testimony from  
9           my trial would show, if you got the trial minutes from  
10          my last trial. The police officer was chasing me and  
11          he tackled me. That was the extent of that assault. It  
12          was nothing about as far as me hitting him, punching  
13          him.

14                      THE COURT: Go ahead.

15                      THE DEFENDANT: Attacking him or anything.

16                      THE COURT: You are talking about the trial I  
17          conducted?

18                      THE DEFENDANT: No, I am talking about the  
19          assault from 1995, the one that I was convicted of.

20                      THE COURT: In front of Judge Kowtna.

21                      THE DEFENDANT: One of the Charges they are  
22          using to make me a violent persistent. I am saying  
23          that there was no actual violence in that case.

24                      The police officer was chasing me, I dove  
25          over a fence, he dove behind me, tackled me and that

1 was the extent of the assault. My trial minutes will  
2 verify that.

3 The officer never said that I hit him,  
4 punched him, kicked him or anything. It was just that  
5 being that the statute under the law dealing with that,  
6 the intent to prevent an officer from performing his  
7 lawful duty.

8 So this was the basis of why I could not get  
9 that case thrown out on the appeal was because they  
10 said I had the intent to prevent a police officer from  
11 performing his duty. It had nothing to do with me  
12 actually doing anything to the officer, to say I am a  
13 violent persistent, to say I have a tendency for  
14 violence.

15 So this is the impression I am getting the  
16 D.A. is saying I have a tendency to commit violent  
17 acts. That particular felony, I did nothing to that  
18 officer at all. Nothing violent.

19 THE COURT: Okay. You are talking about the  
20 trial that was conducted on February 2nd, 1995 in front  
21 of Judge Kowtna, correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay.

24 THE DEFENDANT: The police officer testified  
25 at that trial and he testified to the fact that I did

1 nothing, absolutely nothing to him physically.

2 And, any injury that he sustained was that he  
3 dove over the fence, he said he hit his head, he went  
4 to the hospital, they-- he was off for a week, they  
5 gave him Tylenol. There was nothing, no physical  
6 injury. The whole basis why I could not get that  
7 acquitted on that was because there was no-- it was the  
8 intent to prevent an officer from performing his lawful  
9 duty. Not that I did anything to this police officer.

10 I mean so, when I appealed it, my lawyer, he  
11 never appealed it. He appealed the other assault but  
12 he never appealed that one. He never brought up no  
13 legal issue. He told me I didn't have a legal issue  
14 based on the fact that the clause that is in there  
15 dealing with the intent from the officer performing a  
16 lawful duty. He says it doesn't matter I didn't do  
17 nothing to the officer. It is just a fact that I  
18 prevented him from performing his lawful duty in the  
19 process, he sustained the injury. Therefore, he had no  
20 legal argument.

21 THE COURT: Okay.

22 Now, you had asked me what the minimum and  
23 the maximum was if you were found to be a persistent  
24 violent felony conviction, you asked me that question;  
25 is that correct?

1 THE DEFENDANT: Yes.

2 And Your Honor had told me it was twelve.

3 THE COURT: I will tell you what it is. The  
4 minimum is twelve to life and the maximum is 25 to  
5 life.

6 THE DEFENDANT: Now, when I looked it up,  
7 according to the-- what I submitted, I mean there got  
8 to be -- something got to be wrong. If I go to the law  
9 books and look it up and you are telling me that  
10 according to that amendment, 1995, it says that I am  
11 not supposed to be sentenced under Pataki sentencing  
12 guidelines, based on the years of the felony.

13 THE COURT: But that is your theory and that  
14 is why you submitted--

15 THE DEFENDANT: That is not my theory.

16 THE COURT: Listen to me, would you listen to  
17 me.

18 THE DEFENDANT: I am listening.

19 THE COURT: This is why you submitted  
20 Defendant's Exhibit B, because you feel you should be  
21 sentenced under the old law and not Pataki's law; is  
22 that correct?

23 THE DEFENDANT: I submitted that based on my  
24 understanding of the law. If I am reading it wrong  
25 then somebody should-- my lawyer should read it and

1 tell me that I am reading it wrong. If I am reading it  
2 wrong then I would not be here.

3 THE COURT: Your attorney will address that  
4 in his closing arguments.

5 Anything else you want to tell me?

6 THE DEFENDANT: No, that is basically all I  
7 wanted to discuss dealing with the assault from 1995.

8 THE COURT: Okay.

9 THE DEFENDANT: There was no violence ever  
10 committed in that case.

11 THE COURT: All right.

12 Defendant rest?

13 MR. BARBUTO: The defendant rests.

14 THE COURT: Some closing arguments, please.

15 MR. BARBUTO: Judge, this has been a  
16 relatively short hearing.

17 THE DEFENDANT: Excuse me, excuse me. Before  
18 we have any type of closing argument, I would like to  
19 confer with my attorney. He never read that. He never  
20 read what I submitted today. Do you understand? So I  
21 mean, this is ridiculous.

22 THE COURT: Okay.

23 THE DEFENDANT: He has to at least read what  
24 I gave him in order to argue anything.

25 THE COURT: He knows the law and he will make

1 an argument on it right now. This is not a novel  
2 issue, you brought this up before.

3 THE DEFENDANT: He never read it. He told me  
4 he disagreed. He never read it. How is he going to  
5 represent me if he is not going to read my position.

6 THE COURT: All right.

7 MR. JUNKER: Judge, I do have one or two  
8 questions for the defendant after.

9 THE COURT: You have some questions?

10 MR. JUNKER: Yes.

11 THE COURT: The District Attorney wants to  
12 ask you some questions.

13 MR. JUNKER: I will ask this first be marked  
14 for identification as Exhibit 20.

15 COURT OFFICER: So marked.

16 (So marked.)

17 THE DEFENDANT: I don't have time for this.  
18 If I am not represented correctly and have a fair and  
19 impartial hearing.

20 MR. JUNKER: Judge, let the record reflect, I  
21 am handing what has been marked for identification as  
22 Exhibit 20, to the defendant's attorney and when he is  
23 done with that, I would ask that it be handed to the  
24 defendant for the defendant's review.

25 (Pause.)



1 THE COURT: Do you have a question?

2 MR. JUNKER: Yes, Judge.

3 Has the defendant had an opportunity to review  
4 the document that I have handed him?

5 MR. BARBUTO: That's correct.

6 THE DEFENDANT: Yeah.

7 CROSS EXAMINATION BY MR. JUNKER:

8 Q And that would be the minutes for your resentencing  
9 that you were successful on appeal in the 1995 case with Judge  
10 Kowtna, that you were just referring to, correct?

11 A Yes.

12 Q And, those minutes reflect the new sentence that you  
13 were given after --

14 A On the one count of the indictment.

15 THE COURT: Sir, listen to the question. If  
16 you keep interrupting, you are going to give up your  
17 right to this hearing. I will cut it short. Listen to  
18 the question.

19 Q But those are the minutes from your resentencing,  
20 correct?

21 A Yes.

22 MR. JUNKER: Judge, I would offer this as  
23 People's Exhibit 20, for the purposes of this hearing.

24 THE COURT: Okay.

25 MR. JUNKER: I ask it be admitted into

1 evidence.

2 THE COURT: In evidence.

3 COURT OFFICER: In evidence.

4 BY MR. JUNKER:

5 Q Sir, I am handing you what has been admitted into  
6 evidence previously for this hearing as Exhibit 12, I believe.  
7 Let me know when you are done reviewing it.

8 A Yes.

9 Q Sir, prior to the trial in your present charge, one  
10 of the Charges was criminal possession of a weapon in the  
11 third degree, correct?

12 A Ah-hum, yes.

13 Q And you understood that the reason that that was  
14 elevated to a felony was because of a prior conviction that  
15 was filed by this special certificate, correct?

16 A Yes.

17 Q And you discussed that with your attorney at that  
18 time, Jeff Groder?

19 A Did I discuss what with Jeff Groder?

20 Q You discussed that matter with Jeff Groder prior to  
21 the trial?

22 A No.

23 Q Isn't it true, sir, prior to trial in this matter,  
24 you were asked whether or not you wanted to admit that  
25 document because you did not-- the crime could be proved

1 against you at trial?

2 A Yes.

3 Q And you decided to admit that charge, that that--  
4 you were the same person convicted of those Charges rather  
5 than contest them, correct?

6 A Yes.

7 MR. JUNKER: Thank you.

8 I have no further questions at this time,  
9 Judge.

10 MR. BARBUTO: I have nothing further, Judge.

11 THE COURT: All right. Some closing  
12 arguments.

13 MR. BARBUTO: Judge, as you correctly point  
14 out, I have read the law that Mr. Nealy has submitted.

15 I respectfully suggest based on the evidence  
16 adduced to this Court that there has not been  
17 sufficient proof to adjudged him a persistent violent  
18 felony offender, thank you.

19 THE COURT: Okay.

20 D.A.?

21 MR. JUNKER: Judge, I will be as brief as I  
22 can. But basically, the persistent violent felony  
23 offender here in this case has been proven through  
24 documents that are linked throughout the entire case.

25 First, this defendant has admitted in open

1 court numerous times that he is the same man convicted  
2 at trial in this case. In this case, he pled-- he  
3 admitted his 1995 conviction by way of the special  
4 information that is filed and attached to the  
5 indictment prior to trial. That proves he is the same  
6 person as in 1995.

7 In the 1995 case, he admitted that he was the  
8 same individual who had been convicted of the last  
9 charge which is the, I believe the 1989 conviction.

10 So it has been proven that he is in fact the  
11 same individual through process of all the cases being  
12 linked. I am sorry, a 1998, a 1988 case, excuse me.

13 Moreover, Judge, the time periods needed to  
14 toll in order to prove that the 1998 case can be  
15 included in his persistent violent felony offender  
16 status have been proven. The time period from the  
17 Nassau County Jail alone would be enough to include  
18 this not too much the upstate certificate of time that  
19 he served upstate.

20 Finally, Judge, going to the -- two last  
21 things, one the prior felonies, were in fact violent.  
22 The document has been admitted, all show that they were  
23 said, clearly they were violent. This defendant has  
24 admitted those documents previously, he cannot contest  
25 them now which brings me to my last point the

1 constitutional.

2 The only constitutional defect that the  
3 defendant argues in this trial, is, well you attempted  
4 at one point to argue the 1988 case.

5 However, he has previously in the 1995 case,  
6 admitted that he was a prior felony offender, actually  
7 prior violent felony offender, pursuant to CPL Section  
8 400.15 sub section 8, he is now barred from attacking  
9 the constitutionality of that prior conviction.

10 Now, concerning the 1995 conviction, that he  
11 contests on a constitutional basis. I would submit  
12 that he is not permitted to attack that at this point  
13 and that any attack that he does make is in fact not  
14 credible for the following reasons:

15 One, the People have admitted all the prior  
16 trial testimony for the Court to read and peruse over  
17 to see if there were any constitutional defects in it.  
18 It was submitted for this Court. You had ample time to  
19 read this since the case was adjourned a number of  
20 times for the hearing.

21 Second, at the resentencing after appeal, the  
22 defendant never mentioned any kind of argument he has  
23 had with his attorney about appealing the assault in  
24 the second charge against the officer. I would submit  
25 that the reason that was not done is because he was in

- C O L L O Q U Y -

1 fact guilty of that charge.

2 Lastly, Judge, in that this present case here  
3 today, the charge that he admitted prior to trial, that  
4 elevated the criminal possession of a weapon in the  
5 third to a felony, is that same case.

6 At that time, if he wished to contest the  
7 constitutionality of that case, based upon any kind of  
8 assistance of counsel arguments, he could have done so.  
9 He didn't. Because it was convenient for him at this  
10 time -- at that time rather.

11 Now at this time because it is no longer  
12 convenient, to cease contesting that, he now contests  
13 it. I submit that there was no ineffective assistance  
14 of counsel, that the constitutionality of all cases is  
15 clearly to be affirmed and that all Charges are in fact  
16 violent Charges and that the defendant must be  
17 sentenced under the current sentencing guidelines  
18 because it is the current charge that controls whether  
19 he is a persistent violent felony offender and  
20 therefore he should be given and the People submit he  
21 should be given maximum sentence possible under the  
22 law.

23 THE COURT: Thank you.

24 I have reviewed all the evidence in the case,  
25 also the evidence that the defendant submitted. This is

1 the decision after hearing:

2 After the hearing, after hearing held  
3 pursuant to and in accordance with the Criminal  
4 Procedure Law, Section 40.16, the Court finds that the  
5 People have satisfied their burden of proving beyond a  
6 reasonable doubt that the defendant William Nealy is a  
7 persistent violent felony offender as defined by the  
8 Penal Law under Section 70.08 subdivision 1(A).  
9 Specifically, the People have proved that the defendant  
10 has been subject to two predicate violent felony  
11 convictions. Criminal possession of a weapon in the  
12 second degree, a C violent. The defendant pled guilty  
13 on September 7th, the year-- 1989. Sentenced on 10/6/89  
14 to three and a third to ten years by Judge Thorp.

15 Assault in the second degree, a D violent  
16 felony, the defendant was found guilty after trial on  
17 February 2nd, 1995 and sentenced on March 2nd, 1995 to  
18 an indeterminate sentence of no less than three, no  
19 more than six, as a prior felony offender by Judge  
20 Kowtna.

21 On March 2nd, the year 2002, the defendant  
22 was convicted after trial of the crime of assault in  
23 the second degree, which is a violent felony; criminal  
24 possession of a weapon in the third degree, which is a  
25 non violent felony; menacing in the third degree, a

1 misdemeanor; and resisting arrest, misdemeanor.

2 Pursuant to the Penal Law, 70.02 subdivision  
3 1(C), assault in the second degree, is classified as a  
4 D violent felony. Accordingly, the Court finds that  
5 the defendant to be a persistent violent felony  
6 offender, and will sentence the defendant in accordance  
7 with the Penal Law, 70.08 subdivision 3(C), so ordered.  
8 The order is signed today.

9 Does the defendant wish to say anything  
10 before I pronounce sentence?

11 MR. JUNKER: Judge, I have one question  
12 first.

13 THE COURT: Yes.

14 MR. JUNKER: Does the Court also find that  
15 the tolling period was met for the 1989 conviction?

16 THE COURT: Yes. Because he served three and  
17 a half to ten years.

18 MR. JUNKER: Thank you, Judge, I wanted that  
19 clear for the record.

20 THE COURT: There is no question about that.  
21 That is on the sentence on October 6th, 1989, correct?

22 MR. JUNKER: Thank you, Judge.

23 THE COURT: The period was tolled because he  
24 was sentenced to three and a third to ten.

25 MR. JUNKER: He was serving -- incarcerated



1 during that time.

2 THE COURT: Upstate.

3 MR. JUNKER: Thank you, Judge.

4 THE COURT: Sergeant do you want to give this  
5 to-- he has got to put-- after I sentence him. He has  
6 to insert that after I sentence him.

7 Mr. Nealy, do you want to say anything?

8 THE DEFENDANT: Yes.

9 THE COURT: Before I pronounce sentence?

10 THE DEFENDANT: Yes.

11 THE COURT: Counsel do you wish to say  
12 anything or does Mr. Nealy want to talk?

13 MR. BARBUTO: Mr. Nealy would like to speak.

14 THE COURT: Yes, Mr. Nealy.

15 THE COURT: There is no question about this,  
16 I will direct Mr. Barbuto to file the formal Notice of  
17 Appeal concerning the trial. No question about it.

18 And my poor person notice.

19 THE COURT: That is part of the whole thing.

20 THE DEFENDANT: Yeah, I would like to say a  
21 few things.

22 THE DEFENDANT: First thing I would like to  
23 say, the victim in this case, identified somebody else  
24 as being the person who had the knife the night he was  
25 cut or assaulted. This person has never been arrested.

1 The District Attorney knows who this person is. He hid  
2 this person's identity from me during the trial so I  
3 could not subpoena this person to come testify on my  
4 behalf.

5 Also, someone else has confessed to  
6 committing this crime. I don't understand how -- I  
7 feel that I am the victim of malicious prosecution,  
8 selected prosecution and prosecutorial misconduct. The  
9 victim never identified me by name. He identified  
10 Antoine Alfred(phonetic) being the person who had the  
11 knife at the night of the assault. He said Antoine  
12 Alfred passed the knife to the perpetrator to cut him.  
13 Yet this person who is in a state correctional  
14 facility, never arrested, charged or anything.

15 THE COURT: Okay.

16 THE DEFENDANT: It is my belief, Antoine  
17 Alfred was not involved in this crime. Yet he was  
18 still identified as being involved, yet he was never  
19 charged with anything. District Attorney claims he  
20 never spoke to this person, but I know he spoke to this  
21 person, but he claims he never spoke to this person, he  
22 never charged this person with anything.

23 Also my nephew confessed, he is the one that  
24 assaulted Antoine Alfred. He has never been charged.  
25 It seems like I am the convenient person, that I have a

1 prior criminal record. I am the easier target to get a  
2 conviction off of. It seems to be the basis of my  
3 conviction. I feel there was no evidence to convict  
4 me. I feel that I was not given a fair and impartial  
5 trial.

6 My lawyer, Jeffrey Groder withheld evidence  
7 from me. He withheld evidence of the fact that he knew  
8 who Antoine Alfred was. Called the District Attorney's  
9 response, motion to set aside the verdict. He claimed  
10 that he told Jeffrey Groder in front of Judge Ort's  
11 chamber that Antoine Alfred was in the Nassau County  
12 Jail. Jeff Groder never told me this. He told me he  
13 could not locate this person, that it was a fake name.

14 My family had to go on the internet to locate  
15 this person being in the county jail. I am saying it  
16 is like, you know, the District Attorney has never ever  
17 given me a fair chance to prove my innocence. He  
18 withheld all types of Rosario material.

19 Then when we submitted this information, this  
20 person Jeffery, this person Antoine Alfred was still  
21 never questioned about his involvement with this crime.

22 Now, the District Attorney claimed that I am  
23 a gang member. He says that I am Blood. I am a gang  
24 member and this was the motivation of me committing  
25 this crime because I am Blood. The victim also said

1           that Antoine Alfred was Blood. Antoine Alfred gave me  
2           the knife to cut him and we both Blood, that makes it a  
3           gang assault.

4                       I don't understand how this person Antoine  
5           Alfred never ever -- why he wasn't my codefendant.  
6           Why he was not sitting next to me in trial in this case  
7           when he was identified by name.

8                       Not only he identified by name, his mother's  
9           name and his uncle's name. There was no mistake in  
10          identity. The victim gave his whole family name to the  
11          police. It is not like he said-- he said Shell Alfred.  
12          His uncle's name is George Alfred. He gave his whole  
13          blood line.

14                      THE COURT: Anything else you want to tell  
15          me Mr. Nealy?

16                      THE DEFENDANT: Yeah, I got a few things I  
17          want say.

18                      So, Jeffery Groder, this is my main issue.  
19          Because the-- I feel the District Attorney's job is to  
20          corrupt things and hide evidence that is his function.  
21          I guess it seems. I will not hold him-- but Jeffrey  
22          Groder my lawyer, he is suppose to represent me. He  
23          withheld all this evidence from me. He also withheld  
24          evidence from me that Donald Linera, I used to imitate  
25          his brother. I got a copy of his criminal case. He

1 imitated he was his brother. He got arrested. Jeff  
2 Groder hid this from me. He never says he likes to  
3 imitate he's a Nassau County Correction officer. His  
4 brother. There is all types of evidence that was  
5 withheld from me.

6 Also, parole, I go to trial, parole officer  
7 comes to testify against me. Me being on parole had  
8 nothing to do with this case. The parole officer said  
9 I never confessed nothing to him, yet that was using--  
10 that prejudice me at trial. So it is like-- I was  
11 convicted based on all the prejudicial information that  
12 was given at my trial. I was not convicted based on  
13 the evidence. I was convicted on all the prejudicial  
14 information.

15 Then on top of that, I was kept in shackles,  
16 like I'm a police murderer, like I killed somebody. I  
17 never killed nobody. I don't-- I only have a valid  
18 conviction for ever shooting no nobody or cutting  
19 nobody. You have no actual valids in my record that I  
20 ever did something violent to someone. Yet I was kept  
21 in shackles in the courtroom in front of the jury. In  
22 front of the jury like I am an animal or something like  
23 I am a danger to the jury or to someone in the  
24 courtroom.

25 So these are the things that I feel that

1 played a part, played a major part in me getting  
2 convicted, not that I committed this crime.

3 THE COURT: All right. Thank you.

4 D.A.?

5 MR. BARBUTO: Judge, if I may just briefly.

6 THE COURT: Sure.

7 MR. BARBUTO: I was not the trial counsel, so  
8 I am not in a position to comment on any alleged errors  
9 that may have taken place during the trial.

10 I will suggest to the Court that everything  
11 that Mr. Nealy has just said, are Appellate issues.

12 THE COURT: Right.

13 MR. BARBUTO: And notwithstanding that I have  
14 been ordered to do so, I will certainly file a Notice  
15 of Appeal and file the appropriate motions therewith,  
16 if any, for poor person relief and I will do so within  
17 30 days as the statute requires.

18 On the issue of sentencing itself, I only ask  
19 that this Court consider to give the defendant the  
20 minimum amount possible which will be twelve years.

21 Thank you.

22 MR. JUNKER: People dispute the defendant's  
23 self serving view of events. He has proven himself to  
24 be a very violent individual and we ask for the maximum  
25 sentence allowed by law.

1 THE COURT: All right.

2 After reviewing all the evidence and having  
3 sat in on the original trial in March of last year, I  
4 have searched the record high and low to find some  
5 scintilla of evidence where I should give you the  
6 minimum sentence, Mr. Nealy, I cannot find it.

7 We had to send you to Suffolk County because  
8 some problems in Nassau County. You caused problems  
9 out in Suffolk County Jail, we had to send you to  
10 Riker's. You caused problems in Riker's. So they put  
11 up their hands and sent you back to Nassau.

12 You during the course of the trial, you bring  
13 in a prostitute who lied. Who perjured herself during  
14 the course of that trial. I find-- I wish I had the  
15 vocabulary to describe the individual that you are, but  
16 I don't.

17 So, therefore, it is the sentence of this  
18 Court concerning the assault in the second degree, D  
19 violent, a maximum sentence of no less than 25, no more  
20 than life.

21 With regard to -- \$1,000.00 fine, \$200.00  
22 surcharge and \$10.00 Crime Victim Fee by civil  
23 judgement.

24 Criminal possession of a weapon, a D non  
25 violent, three and a half-- indeterminate sentence of

1 three and a half to seven as a prior felony offender.  
2 The other one he is being sentenced naturally as a  
3 prior violent felony offender. That sentence-- these  
4 sentences are concurrent to one another.

5 With regard to the misdemeanor, time served.

6 With regard to the criminal possession of a  
7 weapon in the third degree, \$1,000.00 fine by civil  
8 judgment.

9 The Orders of Protection, you are revising  
10 them now?

11 MR. JUNKER: Yes, Judge.

12 THE COURT: There is Orders of Protection,  
13 concerning the Linera Brothers; is that correct?

14 MR. JUNKER: Yes.

15 THE COURT: You are to abide by these Orders  
16 of Protection, they are going to be served on you.

17 MR. JUNKER: Judge, I am handing up Orders of  
18 Protection, I made them-- the date for expiration to be  
19 five years after the defendant could have his earliest  
20 release.

21 THE COURT: So this Order of Protection is in  
22 effect until February 10, the year 2028; is that  
23 correct?

24 You are to stay away from Donald and Patrick  
25 Linera, and refrain from harassing, communicating or



1 having anything dealing with these individuals.

2 THE CLERK: Mr. Nealy, you have the right to  
3 appeal from this sentence and these proceedings. If  
4 you wish to appeal, you must file your Notice of Appeal  
5 with the Clerk of the Court within 30 days. If you  
6 cannot afford a lawyer or the minutes of these  
7 proceedings, you may make application to the Appellate  
8 Division which will upon being satisfied that you  
9 cannot afford the same, order that an attorney be  
10 appointed and the minutes provided without any charge  
11 to you, sir.

12 Your lawyer is directed by the Court to  
13 advise you in full and to take the necessary steps  
14 indicated by you in this regard.

15 THE COURT: Give him a copy of my Order too.

16 THE CLERK: I will.

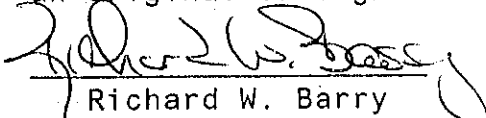
17 THE COURT: And the Orders of Protection.

18 Thank you everybody.

19 MR. BARBUTO: Thank you, Judge, good day.

20 - - - o o 0 o o - - -

21  
22 CERTIFIED to be a true and  
23 accurate transcript ONLY if  
24 an original or signed copy.

25  
26   
Richard W. Barry



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September 5, 2007

Mr. William Nealy, #03A0772  
Southport Correctional Facility  
P.O. Box 2000  
Pine City, NY 14871

Re: File No. N-1975-07

Dear Mr. Nealy:

This will acknowledge receipt of your complaint dated August 19, 2007.

Please be advised that the function of this Committee is to process inquiries for the purpose of ascertaining whether there is evidence of unprofessional conduct which would warrant disciplinary proceedings against the attorney. The allegations of your complaint, however, do not give the Committee cause to believe that the attorney you complain of engaged in unprofessional conduct. Moreover, the Committee cannot render legal advice nor offer legal assistance.

If it is your feeling that your legal rights need protection, we suggest that you consult with an attorney of your own choosing. In addition, the Committee has no authority to intervene in legal disputes nor does it have the same powers of a court to resolve such disputes. You must seek legal redress through the court.

Accordingly, our Committee is unable to assist you.

Very truly yours,

RITA E. ADLER  
Chief Counsel

A handwritten signature in cursive script that reads 'Michele Martino'.

MICHELE MARTINO  
Assistant Counsel

MM:nj



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**CONFIDENTIAL**

January 30, 2008

Mr. William Neary  
03-A-0772  
Southport Correctional Facility  
P.O. Box 2000  
Pine City, New York 14871

Dear Mr. Neary:

The State Commission on Judicial Conduct has received your complaint concerning the attorney who represented your case in 2001.

Your complaint will be presented to the Commission, but please note that the Commission has no jurisdiction over attorneys.

We will communicate with you again after the Commission has reviewed your letter of complaint.

For your information, we have enclosed some background material concerning the Commission, its jurisdiction and its limitations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lee Kiklier".

Lee Kiklier  
Administrative Assistant